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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 379.

ROBERT GALLAGHER, APPELLANT,

vs.

T. F. McGOURIN, UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF FLORIDA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED DECEMBER 2, 1909.

(21,920.)

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1 In the Circuit Court of the United States, Northern District of **Florida.**

Ex Parte ROBERT GALLAGHER.

Petition for Writ of Habeas Corpus.

2 Be it remembered that on the 30th day of October, in the year of our Lord one thousand nine hundred and nine, came Robert Gallagher and exhibited to the said Court his petition for a writ of habeas corpus, which petition with the exhibits thereto attached, is in the words and figures following, to-wit:

In the Circuit Court of the United States in and for the Northern District of Florida.

ROBERT GALLAGHER
vs.
UNITED STATES OF AMERICA.

Petition for Habeas Corpus.

To the Hon. United States Circuit Court for the Northern District of Florida, at Pensacola:

Your petitioner, Robert Gallagher shows to the Court that he is a citizen of the State of Alabama, and that he is now being unlawfully detained and restrained of his liberty within the jurisdiction of this Court at Pensacola, Fla. by Thos. F. McGourin United States Marshal for the Northern District of Florida, that the said imprisonment detention and restraint is illegal, without warrant or authority of law, and is in violation of the Constitution and law of the United States in this:

That the only cause for such detention by the said Thos. F. McGourin, as United States Marshal as aforesaid, is based upon a conviction and sentence in the United States Circuit Court in and for the Northern District of Florida for a violation of Section- 5440 5526 of the Revised Statutes of the United States, and a commitment or mandate and warrant of arrest issued thereon, a copy of said commitment or mandate or warrant of arrest is hereto attached marked exhibit A, with leave of reference thereto as often as may be necessary.

Your petitioner avers that said conviction sentence and warrant of commitment are illegal and afford — for the detention of your petitioner which he avers is in violation of the Constitution and laws of the United States in this, that the United States Circuit Court in and for the Northern District of Florida, had no jurisdiction to try and sentence your petitioner, because the offense, if any, was committed in the Middle District of the State of Alabama and not in the Northern District of the State of Florida, and because, further that the sentence pronounced upon your petitioner is in violation of the Constitution and laws of the United States, even if the Court had 3 jurisdiction of the offense charged because petitioner was sentenced to "hard labor" in the United States penitentiary at Atlanta, and the laws and Statutes of the United States do not authorize such punishment, and your petitioner avers further that such sentence was in excess of the authority of the said Circuit Court and is, therefore, void and affords no authority in law for the detention in law of your petitioner.

Petitioner further avers that the indictment upon which he was tried and found guilty was returned by the Grand Jury not organized as required by law, and that the Court was ordered to be held on the 12th day of November, 1906 when in truth and in fact it was convened on the week preceding on to-wit:—November the seventh, 1906, and because further said petitioner was indicted by a Grand Jury in the United States Circuit Court for the Northern District of Florida, and said grand jury had no authority in law to sit as a grand jury. That said petitioner further avers that he was tried at the March adjourned term, as alleged in the indictment of the year 1906 in the United States Circuit Court for the Northern District of Florida and that the said Court had no jurisdiction to try said petitioner for the offense charged against him because said court was not lawfully organized and was sitting neither at a regular or special term lawfully authorized and caused to be held.

Petitioner further avers that there was no legal evidence introduced before said Grand Jury authorizing the finding of a true bill, or the indictment upon which he was tried.

Wherefore, your petitioner prays that a writ of habeas corpus be granted this court in behalf of him directed to the said Thos. F. McGourin United States Marshal in and for the Northern District of Florida who holds your petitioner in custody, commanding him to bring petitioner into this Court together with the cause of the detention thereof of your petitioner, at a time and place to be specified by this Court, and that your petitioner may be released and discharged from the custody of said Thos. F. McGourin United States Marshal as aforesaid, and that petitioner be restored to his liberty, And will ever pray.

State of Florida,
County of Escambia:

Before me personally appeared Robert Gallagher, who upon oath says that the facts set forth in the foregoing petition are true except as to the facts alleged upon information and belief and as to 4 such facts he verily believes them to be true.

ROBERT GALLAGHER.

Subscribed and sworn before me this 30 day of October, A. D. 1909.

[SEAL.]

F. W. MARSH,
Clerk of the Circuit Court of the United States
for the Northern District of Florida.

UNITED STATES OF AMERICA, *ss:*

[Seal of the United States Circuit Court of Appeals, Fifth Circuit.]

The President of the United States of America to the Honorable the Judges of the Circuit Court of the United States for the Northern District of Florida, Greeting:

Whereas, lately in the Circuit Court of the United States for the Northern District of Florida before you, or some of you, in a cause between the United States, plaintiff, and W. S. Harland, Robert Gallagher, Oscar Sandor, E. Newlander, C. C. Hilton, Jebb S. Howell, John Atwell, Walter E. Grace, S. E. Huggine, Archie Bellinger, Harry Halverson, one Angelo and one Lamater, alias Lameater, the following judgment and sentence was made and entered, to-wit:

"No. 590.

THE UNITED STATES
VS.
W. S. HARLAN et al.

Indictment: Violation Sec. 5440-5526, R. S. U. S.

And now at this time this cause came on again to be heard, and the said jury being in their box, and the said defendants and their Counsel in Court, the cause proceeded on the taking the testimony of the witnesses in the cause, and after hearing the evidence aforesaid of the witnesses, the argument of counsel, and the charges in the Court, the said Jury retired to consider of their verdict, and after due consideration, came into Court and presented the following verdict, to-wit:

"PENSACOLA, FLA., *Dec.* 8, 1906.

We, the jury, find the defendants, Robert Gallagher, Oscar Sandor and W. E. Grace guilty as charged. And the defendants, W. S. Harlan, E. Newlander, Archie Bellinger, Harry Halverson and John La Maiter not guilty.

"JOHN G. WELSH, *Foreman.*"

5 Whereupon, the Court not being fully advised in the premises, and upon application of the defendants convicted as aforesaid, admitted each to bail in the sum of two thousand dollars each, which they did then and there give pending sentence by the Court.

And afterwards, to-wit:—on the fourteenth day of December, A. D. 1906, the following proceedings were had in said cause to-wit:

No. 590.

THE UNITED STATES
vs.
ROBERT GALLAGHER, WALTER E. GRACE, and OSCAR SANDOR.

Indictment: Violation Sec. 5440-5526, R. S. U. S.

And now at this time came the United States by William B. Sheppard, United States Attorney for the Northern District of Florida, who prayed the judgment of the Court upon one Robert Gallagher, one Walter E. Grace and one Oscar Sandor, heretofore convicted in this Court of a violation of Section- 5440-5526 of the Revised Statutes of the United States, under indictment No. 590, and the said defendants and each of them being in Court, and the Court being fully advised in the premises, ordered the said defendants to the bar of the Court, whereupon the following sentences were imposed, to-wit:

Sentence-

It is ordered and adjudged by this Court that the said defendant Robert Gallagher, be taken hence to the Federal Penitentiary at the City of Atlanta, in the State of Georgia, and there confined, at hard labor, for and during the term and period of fifteen months, and that he further pay to the United States of America the fine or penalty of one thousand dollars, and that he stand committed until the terms of this sentence be complied with, or until he be discharged by due course of law.

It is further ordered and adjudged by this Court, that the said defendant, Walter E. Grace, be taken hence to the Federal Penitentiary, at the City of Atlanta, in the State of Georgia, and there confined, at hard labor, for and during the term and period of thirteen months, and that he further pay to the United States of America the fine or penalty of one thousand dollars, and that he stand committed until the terms of this sentence be complied with, or until he be discharged by due course of law.

6 It is further ordered and adjudged by this Court, that the said defendant, Oscar Sandor, be taken hence to the Federal Penitentiary, at the City of Atlanta, in the State of Georgia, and there confined, at hard labor, for and during the term and period of thirteen months, and that he further pay to the United States of America the fine or penalty of one thousand dollars, and that he stand committed until the terms of this sentence be complied with or until he be discharged by due course of law.

And upon motion of the several defendants, the Court ordered that the said defendants be permitted to have five months from this date in which to file their bill of exceptions in this cause, as by the inspection of the transcript of record of the said Circuit Court which was brought into the United States Circuit Court of Appeals for the Fifth Circuit by virtue of a writ of error sued out by Robert Gallagher, Oscar Sandor and W. E. Grace, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of November, in the year of our Lord one thousand nine hundred and eight, the said cause came on again to be heard before the United States Circuit Court of Appeals, on the said transcript of record and was argued by counsel.

In consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said Circuit Court in this cause be, and the same is hereby, affirmed, Feb. 23, 1909.

You, therefore are hereby commanded that such execution and further proceeding be had in said cause as according to right and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States the 27th day of August, in the year of our Lord one thousand nine hundred and nine.

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

7 Endorsed: United States Circuit Court of Appeals for the Fifth Circuit. No. 1696. November Term, 1908. Robert Gallagher et al. vs. The United States. Mandate. Filed Aug. 28, 1909. F. W. Marsh, Clerk.

UNITED STATES OF AMERICA,
Northern District of Florida:

I, F. W. Marsh, Clerk of the Circuit Court of the United States in and for the Northern District of Florida, and the Fifth Judicial Circuit, do hereby certify, that the foregoing contains a true, perfect and correct copy of the Mandate in said cause as therein set forth.

In witness whereof, I hereby set my hand, and the seal of said Court at the City of Pensacola, in said District, this the 1st day of November, A. D. 1909.

[SEAL.] F. W. MARSH, *Clerk.*

Endorsed: In the Circuit Court of the United States in and for the Northern District of Florida. Petition for writ of Habeas Corpus. Robert Gallagher, petitioner, vs. United States of America. Filed Oct. 30, 1909. F. W. Marsh, Clerk.

Whereupon, to wit:—on the said 30th day of October, A. D. 1909, the Judge of said Court, made and caused to be entered of record, an Order in said cause, which is in the words and figures following, to-wit:

In the Circuit Court of the United States in and for the Northern District of Florida, at Pensacola, Florida.

Ex Parte Robert Gallagher.

Petition for Writ of Habeas Corpus, Directed to Thomas F. McGourin, United States Marshal, Northern District of Florida.

This Petition coming on to be heard, and having been considered by me:

It is ordered that the said Thomas F. McGourin be and he is hereby commanded to have the body of the said Robert Gallagher, Petitioner allaged to be imprisoned and detained by you, together with the time and cause of such imprisonment and detention, before this Court, at the Court room in the City of Pensacola, State of Florida, on the instant day of October, A. D. 1909, and to do and receive that shall then and there be considered and determined concerning the said Petitioner, and to have then and there this writ. 8

THOS. G. JONES,
U. S. Judge.

Endorsed: Ex parte Robert Gallagher. Order granting Writ of Habeas Corpus. Filed Oct. 30, 1909. F. W. Marsh, Clerk.

And afterwards, to-wit:—on the 1st day of November, A. D. 1909, came the said United States Marshal and filed in the office of the Clerk of said Court his Answer to the said Petition and Order, which Answer is in the words and figures following, to-wit:

In the Circuit Court of the United States in and for the Northern District of Florida.

In re Robert Gallagher.

To the Honorable Circuit Court of the United States for the Northern District of Florida:

I hereby certify and return that before the coming to me of the annexed writ of habeas corpus the said Robert Gallagher was committed to my custody, and detained by me by virtue of a warrant of sentence issued out of the United States Circuit Court, in and for the Northern District of Florida, and by the indorsement made upon said warrant. Copy of said warrant and indorsement is annexed hereto and made a part of this return. Nevertheless, I have the body of the said Robert Gallagher before the Honorable Court as I am in the said writ commanded.

T. F. McGOURIN,
United States Marshal in and for the
Northern District of Florida.

Sworn to and subscribed before me this 30th day of October, A. D. 1909.

[SEAL.] —— ——, *Clerk.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit, Northern District of Florida.

9 The President of the United States to the Marshal of the United States for the Northern District of Florida, Greeting:

Whereas, at a session held by our Circuit Court of the United States for the Fifth Circuit and Northern District of Florida, at the City of Pensacola, on the 12th day of November, 1906, an indictment was duly found and presented by the Grand Jury in our said Court against one Robert Gallagher and one Walter E. Grace et als., for that within the District aforesaid, and within the jurisdiction of this Court, *then* did then and there falsely, unlawfully and wickedly conspire, combine, confederate and agree together and among themselves to commit an offense against the laws of the United States, that is to say,—to arrest divers persons to the Grand Jury unknown, who had been, before the time aforesaid, in the employ and were indebted to, or alleged to be indebted to the Jackson Lumber Company, and who had quitted the employment aforesaid while in debt to, or alleged to be in debt to the said Company, with intent then and there to arrest and return the said divers persons, etc., to a condition of peonage, to be held by the said Company to work out a debt claimed to be due to the said Jackson Lumber Company by the said divers persons, and did in pursuance thereof arrest one Trudich Mihaly, etc., in violation of the provisions of the Acts of Congress of the United States, approved March 2nd, 1867, Chapter 169, and of Sections 5440-5526 of the Revised Statutes of the United States.

And afterwards, to-wit:—on the 8th day of December, 1906, the said Walter E. Grace et als., were tried by a Jury on the charges aforesaid in said indictment preferred, and a verdict of guilty was duly rendered by the said Jury against the said Walter E. Grace et als.

2.

And whereas, afterwards, to-wit:—on the 14th day of December, 1906, our said Court, by reason of the Verdict aforesaid of the said Jury, did duly sentence the said Walter E. Grace, to be imprisoned, at hard labor, in the Federal Penitentiary at Atlanta, in the State of Georgia, for an during the term and period of Thirteen months, and further to pay a fine of One Thousand dollars and that he stand committed until the terms of this sentence be complied with, or until he be discharged by due course of law, the said Federal penitentiary being the place duly selected for the imprisonment of persons convicted of offences against the laws of the United 10 States in the Courts thereof, in said Northern District of Florida. Execution of the above sentence having been stayed pending an Appeal and judgment of said Court being affirmed by mandate received Aug. 28, 1909, Now, therefore, you the said Marshal are hereby commanded forthwith to convey to the said Federal Penitentiary at Atlanta, in the State of Georgia, the body of the said Walter E. Grace, and deliver him to the keeper thereof.

And you the said Keeper, in the name of the President of the United States of America, are hereby commanded to receive the body of the said Walter E. Grace, the person aforesaid, into your custody, and him, the said Walter E. Grace, safely keep in the said Federal Penitentiary at Atlanta, in the State of Georgia, at hard labor, for the full term and period of thirteen months, or until he be discharged in due course of law.

Herein fail not at your peril: And make due return of what you shall do in the premises and of this writ.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of this Court, this 28th day of August, A. D. 1909.

[Seal of the U. S. Circuit Court for the
Northern District of Florida.]

F. W. MARSH, *Clerk*,
By A. G. CHIPLEY, *D. C.*

Indorsed on back as follows: United States Circuit Court. No. 590. United States vs. Robert Gallagher. Warrant of Sentence.

Endorsed: In Re Robt. Gallagher, Return of Marshal*l*. R. P. Reese, Sp'c'l Ass't to the Att'y General. Filed Nov. 1, 1909, F. W. Marsh, Clerk.

And afterwards, to-wit:—on the 2nd day of November, A. D. 1909, came Counsel for Petitioner, and filed in the office of the Clerk of said Court an amendment to the said Petition, which is in the words and figures following, to-wit:—

11 In the Circuit Court of the United States in and for the Northern District of Florida.

ROBERT GALLAGHER
vs.
UNITED STATES OF AMERICA.

The Honorable United States Circuit Court for the Northern District of Florida:

Now comes said petitioner, after leave of said Court, first had and obtained, and amends his petition for writ of habeas corpus herein, by adding to said petition just before the prayer thereof, the following paragraph, to-wit:—

Petitioner further avers that the trial of said petitioner by said Court was unauthorized and void, in that it was not upon an indictment returned by a Grand Jury legally organized, and furthermore, that the assumed indictment upon which defendant was tried was and is, illegal and void, and there was in fact no indictment.

WM. W. FLOURNOY,
J. F. STALLINGS,
Attorneys for Petitioner.

Endorsed: The U. S. Circuit Court, Robert Gallagher vs. U. S. Amendment to Petition. Amendment allowed by Court, and filed November 2nd, 1909, F. W. Marsh, Clerk.

And upon the 1st day of November, A. D. 1909, came the Attorney for the United States, and moved the Court to strike a certain portion of the sentence in the said cause, which Motion is in the words and figures following, to-wit:—

In the Circuit Court of the United States in and for the Northern District of Florida.

In re Robert Gallagher.

Now comes the United States by its counsel R. P. Reese, and moves the court to strike out that portion of the petition of the writ of habeas-corpus herein, wherein it is alleged that the sentence is in excess of the jurisdiction of this court, in that it provides for "hard labor;" because the said sentence had been amended by striking out that portion of the sentence providing for hard labor.

R. P. REESE,
Special Ass't to the Attorney General.

Endorsed: In Re, Robt. Gallagher. Motion to strike portion of petition. R. P. Reese, Special Ass't to Att. Gen'l. Filed Nov. 1, 1909, F. W. Marsh, Clerk.

And afterwards, to-wit:—upon the 3rd day of November, A. D. 1909, came R. P. Reese Esq., and filed in the office of the Clerk of said Court a certain Motion with regard to remanding prisoner, etc., which Motion is in the words and figures following, to-wit:—

In the Circuit Court of the United States for the Northern District of Florida.

Ex Parte Robert Gallagher.

And now comes the United States, by R. Pope Reese Esq., Special Assistant to the Attorney General of the United States, and moves the Court to deny the prayer of the petition herein, and to discharge the Writ, and to remand the prisoner to the custody of the

United States Marshal for the Northern District of Florida, upon the Answer of the said Marshal, and of the proofs offered in support thereof.

R. P. REESE,
Spe. Ass't to Att'y Gen.

Endorsed: Ex parte Robert Gallagher. Motion of U. S. to remand prisoners. Filed Nov. 3, 1909, F. W. Marsh, Clerk.

And afterwards, to-wit:—on the said 3rd day of November, A. D. 1909, came Counsel for defendant, and filed in the office of the Clerk of said Court a motion to discharge said defendant from custody, which Motion was in the words and figures following, to-wit:—

In the United States Circuit Court in and for the Northern District of Florida, at Pensacola, Fla.

Ex Parte ROBERT GALLAGHER.

13 And now comes the petitioner, and moved the Court to discharge him from the custody of the Marshal of the United States for the Northern District of Florida, and to release him from imprisonment thereunder, upon the petition herein, the pleadings and proof offered in support thereof; and notwithstanding the pleadings and proof offered in opposition thereto by R. Pope Reese Esq., Special Assistant to the Attorney General of the United States.

W. W. FLOURNOY,
J. F. STALLINGS,
Attorneys for Petitioner.

Endorsed: Ex Parte Robert Gallagher. Motion to Discharge Prisoner. Filed Nov. 3, 1909. F. W. Marsh, Clerk.

Whereupon, the Judge of said Court made and caused to be entered of record, the following Order, (of date the 3rd day of November, A. D. 1909,) which is in the words and figures following, to-wit:

Ex Parte ROBERT GALLAGHER.

Application for Discharge on Habeas Corpus.

This day again came the petitioner in person, and by attorney, and also came the Special Assistant to the Attorney General R. Pope Reese, who appeared for the Government, and the Court having heard the evidence offered by the parties, and argument of Counsel. is of opinion, that the detention and imprisonment of which petitioner complains is not illegal, and that he has shown no cause why he should be discharged from custody, and that the Writ should be discharged. It is, therefore, considered and adjudged by the Court that the petition for discharge on habeas corpus be denied and refused, and that the writ be discharged, and that petitioner be remanded to the custody of the Marshal, and that he pay the costs of the proceeding.

Minute Book "G", Page 302, Minutes of the United States Circuit Court for the Northern District of Florida, at Pensacola, Fla.

And afterwards, to-wit:—on the said 3rd day of November, A. D. 1909, came the Counsel in the cause, and filed in the office of the Clerk of said Court a certain Stipulation, which, with the approval of the Judge of said Court, is in the words and figures following, to-wit:

14 In the United States Circuit Court for the Northern District of Florida.

Ex Parte Robert Gallagher.

It was stipulated in open Court, Judge Thomas G. Jones presiding, and the parties herein being represented by Counsel, who agreed that the Judge who presided at the trial of this cause, should have the power to sign and allow the Bill of Exceptions in this cause, either within or without the Northern District of Florida.

Approved:

THOS. G. JONES, *Judge.*

Pensacola, Fla., Nov. 3, 1909.

Endorsed: Ex parte Robert Gallagher. Stipulation and order as to signing bill of exceptions. Filed Nov. 3, 1909. F. W. Marsh, Clerk.

And afterwards, to-wit:—on the 3rd day of November, A. D. 1909, came the said Robert Gallagher, and filed in the office of the Clerk of said Court, his Petition for allowance of an Appeal, which petition is in the words and figures following, to wit:

United States Circuit Court, Northern District of Florida, at Pensacola.

Ex Parte Robert Gallagher.

In the Matter of the Petitioner of Robert Gallagher for Writ of Habeas Corpus to Release Him from the Custody of the Marshal of the United States for the Northern District of Florida, under Sentence of the Circuit Court of the United States for the Northern District of Florida, Adjudging Him Guilty of the Violation of Sections 5440-5526, Revised Statutes of the United States, Made on December 14th, 1909.

15 Robert Gallagher, being dissatisfied with the Judgment and Order of this Court rendered in the above cause on the

3rd day of November, A. D. 1909, discharging the Writ of Habeas Corpus heretofore issued in the said cause, and refusing to discharge him from the custody of the Marshal of the United States, aforesaid, under the sentence, aforesaid, prays the allowance of an Appeal therefor to the Supreme Court of the United States.

W. W. FLOURNOY,
J. F. STALLINGS,
Attorneys for Petitioners.

Endorsed: Ex parte, Robert Gallagher. Petition for Appeal. Filed Nov. 3, 1909. F. W. Marsh, Clerk.

Whereupon, the Judge of said Court, made and caused to be entered of record an Order on Appeal, which is in the words and figures following, to-wit:—and was made upon the 3rd day of November, A. D. 1909.

In the United States Circuit Court in and for the Northern District of Florida.

Ex Parte ROBERT GALLAGHER.

The Appeal prayed for by the said Petitioner is allowed this 3rd day of November, A. D. 1909; and it is ordered, that upon the execution of a bond by the said Robert Gallagher, payable to the United States, in the sum of Four Thousand Dollars condition- to appear in the Supreme Court of the United States at the present term thereof, to be held at the City of Washington, on the 3rd day of December, A. D. 1909, and from day to day thereafter during said term, and from term to term, and from time to time until finally discharged therefrom, and to abide and to obey all orders made by the Supreme Court, and surrender himself in execution of the judgment and sentence pronounced upon him on the 14th day of December, A. D. 1906, by the Circuit Court of the United States for the Northern District of Florida, if the judgment and sentence of the said Circuit Court, discharging the Writ of Habeas Corpus prayed for by him shall be affirmed by the said Supreme Court of the United States.

THOS. G. JONES, *Judge.*

Endorsed: Ex parte Robert Gallagher. Order allowing Appeal & Supersedeas. Filed Nov. 3, 1909. F. W. Marsh, Clerk.

16 And afterwards, to-wit:—on the 3rd day of November, A. D. 1909, came Counsel for Robert Gallagher, and filed in the office of the Clerk of said Court the Assignment of Errors in the said cause, which are in the words and figures following, to-wit:

Circuit Court of the United States, Northern District of Florida.

ROBERT GALLAGHER, Appellant,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Assignment of Errors.

The Appellant assigns as error in the record of the proceedings of the Circuit Court below, dismissing the Writ of Habeas Corpus prayed for, as follows:

1. The Court erred in dismissing the said Writ;
2. That the Court erred in remanding the prisoners to the custody of the Marshal of the United States for the Northern District of Florida;
3. That the Court erred in refusing to discharge the prisoners from custody;
4. That the Court erred in holding that the term of United States Circuit Court for the Northern District of Florida, at which the petitioner was convicted and sentenced, was a legal term of Court;
5. That the Court erred in finding that the indictment upon which the petitioner was tried and convicted, was found by a grand Jury of the Circuit Court;
6. That the Court erred in holding that the Bill of Exceptions in the main suit was no part of the record, and that the same could not be re-examined in Habeas Corpus proceedings;
7. The Court erred in holding that the Minutes of the Court showed record entry that the indictment was returned and presented by the Grand Jury in open Court;

8th. The Court erred in amending the sentence by striking out words "Hard Labor."

WM. W. FLOURNOY,
J. F. STALLINGS,
Counsel for Appellant.

17 Endorsed: Robt. Gallagher vs. U. S. Assignment of Errors. Filed Nov. 3, 1909, F. W. Marsh, Clerk.

And afterwards, to-wit:—on the said 3rd day of November, A. D. 1909, came Counsel for the said Appellant, and filed in the office of the Clerk of said Court, the Supersedeas Bond in the said cause, which bond is in the words and figures following, to-wit:—

Know all men by these presents: that we, Robert Gallagher, as principal, and T. A. Jennings and Morris Bear, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Four Thousand —, to be paid to the United States of America, which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 3rd day of November, A. D. 1909.

Whereas, lately, at the March Adjourned Term, A. D. 1906, of the Circuit Court of the United States for the Northern District of Florida, the said Robert Gallagher, was on the 14th day of December, A. D. 1906, adjudged guilty by said Circuit Court of a violation of Section 5440 of the Revised Statutes of the United States, and sentenced to a term of 15 months in the Federal Penitentiary at Atlanta, in the State of Georgia, and

Whereas, the said Robert Gallagher has applied for a Writ of Habeas Corpus to discharge him from the custody of the Marshal of the United States for the Northern District of Florida, under the said sentence, and

Whereas, the said United States Circuit Court for the said District has remanded him to the custody of the said United States Marshal; and

Whereas, the said petitioner has applied for and obtained an Appeal to the United States Supreme Court to reverse the said judgment of the said Circuit Court, and a Citation directed to the United States of America, citing and admonishing the United States of America to be and appear in the Supreme Court of the United States, at the City of Washington, in the District of Columbia, 30 days from and after the date of said Citation, and

Whereas, the said Circuit Court has, in the allowance of said Appeal, ordered that upon the execution of this bond the said Robert Gallagher shall be liberated from the custody of the said United States Marshal;

18 The conditions of the above obligation are such, that if the said Robert Gallagher shall appear in the Supreme Court of the United States at the term aforesaid, to be held in the City of Washington, in the District of Columbia, on the 3rd day of December, A. D. 1909, and from day to day thereafter during said term, and from term to term, and from time to time, until finally discharged therefrom, and shall abide and obey all orders made by the said Supreme Court of the United States in said cause, and shall surrender himself in execution of the judgment and sentence aforesaid pronounced against him by the said Circuit Court of the United States for the Northern District of Florida, if the judgment and sentence of said Circuit Court, denying the Writ of Habeas Corpus prayed for by him, shall be affirmed by the Supreme Court of the United States; then the above obligation to be void, else to remain in full force and virtue.

ROBT. GALLAGHER. [SEAL.]
T. A. JENNINGS. [SEAL.]
MORRIS BEAR. [SEAL.]

Taken and approved this 3 day of November, A. D. 1909.

THOS. G. JONES, *Judge.*

Endorsed: Ex parte Robert Gallagher. Supersedeas Bond. Filed Nov. 3, 1909. F. W. Marsh, Clerk.

And afterwards, to-wit:—on the 24th day of November, A. D. 1909 the following Bill of Exceptions was made, filed and entered in said Court in said cause, to-wit:—

19 In the Circuit Court of the United States in and for the Northern District of Florida.

Ex Parte ROBERT GALLAGHER
vs.
UNITED STATES OF AMERICA.

Be it remembered that in the above entitled cause and in said Court in accordance with the order of Judge Don A. Pardee, to wit:

"In the Circuit Court of the United States, Fifth Judicial Circuit.

Whereas, owing to the recusation of the Judge of the Northern District of Florida in certain important government cases, the public interests require a Judge of another District in said circuit to be designated and appointed to hold the Circuit and District Courts in the said Northern District of Florida to hear and determine all cases in which the Judge of said District is disqualified,—

Now, therefore, I, Don A. Pardee, Circuit Judge, do hereby designate and appoint the Honorable Thomas G. Jones, Judge of the Northern and Middle Districts of the State of Alabama, to act in aid of the Judge of the Northern District of Florida aforesaid, and to hold terms of the Circuit and District Courts, and to discharge all duties of the Judge of said district, and to hear and determine all cases in which the said Judge is disqualified.

Witness my hand this 11th day of October, 1909.

(Signed) DON A. PARDEE,
Circuit Judge."

this court was opened on the 29th day of October and after certain proceedings shown by the record adjourned until the 30th of October, 1909, and after certain proceedings shown by the record adjourned until the 1st day of November, 1909 whereupon the following proceedings were had, to wit:

20 In the Circuit Court of the United States in and for the Northern District of Florida.

Ex Parte W. S. HARLAN, C. C. HILTON, S. E. HUGHES, and ROBERT GALLAGHER.

Appearances.

Attorney for Government, R. Pope Reese.
Attorneys for Defendants, W. W. Flornuoy, J. F. Stallings.

Hearing resumed before the Hon. Thos. G. Jones.
Court opened at 2:00 P. M. Nov. 1—1909.

COURT: The return has been made on the writ?
FLORNUOY: Yes sir.

Court: What do you do with the return, traverse or demur?

Flournoy: We traverse the return informally. I understand that there is a motion to be disposed of first; the Government wishes to make a motion.

Court: Yes, this has been done.

Reese: We have a motion, if your honor pleases, in each of the cases. The first is in the case of Harlan, Hilton and Huggins. (Reads motion to amend sentence by striking out the words "at hard labor." Exhibits motion and order marked "O" and "P.")

Court: Have you any objection to that?

Stallings: We do not think, if your honor pleases, that the record of conviction can be changed. Our view is that the term "hard labor" is not contained in the statute, and renders the sentence void. We would not like to consent to its being changed.

Court: The Court gives you an exception.

Reese: The petition for writ is before the court and returned, and now we make the motion to strike out that portion about hard labor. The court grants that motion?

Court: Yes.

21 Reese: Another motion against Robert Gallagher. This is the only other defendant that appeared. There were two in that cause, but one did not appear before the court. (Reese makes motion to strike out term in sentence, "at hard labor.")

Court: That's al- right, it is not necessary to reach the technical points now, if you are going to make a motion let it come out then.

Reese: The only thing I desire to do is to get this record straight, the motion as made will become a part of the record as it comes up.

Court: The order of this court amending it is before the Court, is shows that petition is not all taken in. It would come up on the merits. The whole proceeding is summary. You need not bother me about technical objections.

Reese: I want this to appear as the two cases are separate.

Court: The court will grant that motion, because the facts show a misprision and it is separable. This matter was already adjudged and is immaterial now.

Flornuoy: I think the objections are to material circumstances.

Court: That is the same, it has been adjudged.

Flournoy: We offer the stipulation between the Government counsel and counsel for the defendants that will save a great deal of time.

Court: You might as well get this in shape, you can introduce whatever you think proper with this stipulation, and can move to strike it out or ask to make a motion to remand the defendant or release him, and the court will rule on that, I understand you just entered a general traverse, in order to prove your evidence.

Flournoy: That is it. We want to introduce the record the minutes of the Circuit Court and including the trial of this case.

Court: You mean the minutes of the Circuit Court for that time?

Flornoy: The whole minutes with explanations, we want everything in connection with the case. All the months mentioned contained in the minutes. Copy of which we offer in evidence and mark exhibit "A."

COURT: And what else?

FLORNOY: The action of the Court in relation to it, that shows the court was not in session at the time of the trial.

COURT: All you want is evidence showing that the court was not actually in session at the time of the trial?

22 FLOURNOY: Yes sir.

Court takes a recess for fifteen minutes till Mr. Marsh can arrive with the circuit court minute books.

Court opened at 3 O'clock P. M.

Mr. F. W. MARSH, Clerk of the United States Circuit and District Courts for the Northern District of Florida called and duly sworn testifies as follows:

Direct examination by Mr. W. W. FLOURNOY:

Mr. FLOURNOY: We have offered in evidence the contents of the minutes of the Circuit Court for the Northern District of Florida, form March 5th, 1906 to December 14th 1906 same are admitted and marked exhibit "A."

Q. Your name is F. W. Marsh?

A. Yes sir.

Q. How long have you been clerk of the Circuit Court of the Northern District of Florida?

A. Since 1895, up to the present time.

Q. Have you there the minutes of the U. S. Circuit Court for the Northern District of Florida? From March 6th 1906 to December 14th, 1906?

A. Yes sir.

COURT: One moment, has not counsel agreed as to that period of time?

Mr. FLOURNOY: I just want to explain a small portion.

Q. You have that record of the minutes on the fifth of March?

A. Yes sir.

Q. How was that record kept on the books by rubber stamp or by writing?

A. The orders of proceedings in here is a combination of each, partly in rubber and partly in pen. The date in pen and the balance in rubber stamp, numbers in rubber stamp.

Q. Was the court in session upon that day, March 5th, in actual session?

A. It appears from the minutes to have been.

Q. Never mind the minutes, what were the facts? Was that rubber stamp used only when the court was in session, or used whether the Judge was here or not?

A. That was never used except when the presiding Judge was present here.

Q. Was the presiding Judge present in the court room when that stamp, which we will call Number One was used?

23 A. I have no recollection whether this entry was made when the Judge was present or not.

Q. That's the official minute book of the Court?

A. Yes, sir.

Q. You have two rubber stamps have you not?

A. I have several.

Q. You have two you use on these minutes, Volumes F. and G.?

A. ——.

COURT: What's the use of all that?

FLOURNOY: We are showing that there was no session of court at the time this order was put on. There was no session or term of the Court at that time.

COURT: How does that rubber stamp read?

Mr. FLOURNOY: (Reads contents of stamp, with interlineations of date in pen as follows:

Stamp No. 1, part 1:

"At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida. Begun and held at the City of Pensacola, on the — day of —— A. D. 190–: Present, The Honorable Charles Swayne, Judge. Among the proceedings had were the following, to-wit:"

Stamp 1, part 2:

"It was ordered that the Court adjourn until to-morrow morning at 10 o'clock."

Stamp 2, part 1:

"Court was opened pursuant to the said order. Present the Clerk and the Marshal."

Stamp 2, part 2:

"It was ordered that Court adjourn until to-morrow morning at 10 o'clock."

COURT: That contains a statement of the order of Court on this day in the case of Harlan?

MARSH: No sir.

FLOURNOY: We ask that the contents of the rubber stamp be made a part of the record of this Court as Exhibit "2." We want the contents of it not the stamp itself.

COURT: I understand, but when you offer the minutes you have got that in the record.

FLOURNOY: We merely want to let the stenographer get it in the record.

COURT: Well put it in for evidence. It is put in as evidence but it is already contained in the Minutes.

Examination of Mr. MARSH continued:

Q. Mr. Marsh, was there any order made by the court on that day, March 5th, 1906.

24 **Court**: I understand that there is nothing in this case of Harlan on that day.

Flournoy: Yes sir, I just want to know if there was any order of court made on that day.

Mr. **Marsh**:

A. A final decree in equity, in Fred. W. Hayard vs. McLain, & Co.

—. This is the only order by the Court on that day.

A. Yes sir it is.

Q. The same rubber stamp is used on the 6th, 7, 8, 9, & 10th of March, 1906 is it not.

A. Yes sir.

Q. Were there any orders on these days?

A. There was on the tenth.

Q. What was it?

A. A bill in a chancery suit, order was entered.

Court: The minutes themselves will show that.

Mr. **Reese**:

Q. Mr. Marsh, there was one order, a final decree in an equity suit, and the filing of an amended bill in a chancery suit?

A. Yes sir.

Mr. W. W. **Flournoy**:

Q. Did the court sit in session actually in these cases?

A. It was present in the city on that day, the day these were entered.

Q. Was the Court sitting or was it in Chambers?

A. I cannot say whether it was in chambers or in the Court room.

Q. Can you state whether or not this Court was in session after April that year?

A. ——.

Court: The minutes will show that.

Flournoy: We want to get it complete.

Reese: I object to this. It does seem to me you can't explain the minutes in this way. The order was made by the Judge and the presumption is it was correct. This is not the proper way to contradict the Court records.

Flournoy: Here is the record called minutes, signed neither by the Judge or the Clerk, it does not state the Judge was there, and he might not have been in the City: there was evidently no term of Court.

Court: I understand. I am going to let you bring out that the court was not there. Suppose I was sick, you came to my house on a case, I send an order to the Clerk, the Clerk enters on the minute book that the Court was open, Hon. Thos. G. Jones presiding. That would be all right, the custom is to open and state that the judge was present, the point I understand is the objection of the Attorney General to your showing by evidence, oral, the contents of the minutes of the Court. You can let it in for the present. It is not necessary for the Judge to sign the minutes, if it is kept as a record of the Court proceedings, there is no necessity for it.

25 Flournoy: But when the court says nothing and there is no order for 30 days at a time?

Court: If the record shows no order, then you can show that.

Stallings: There is no order.

Court: What is it you are trying to prove?

Flournoy: I just wanted to show the minutes were stamped with a rubber stamp with the knowledge that the Judge was out of town, the Judge being not in the City, there could be no term of Court. There is no order calling the term of court.

Court: All that is proved by the minutes.

Flournoy: I want to show that it was a rubber stamp used to enter this order of opening and adjourning court.

Court: What is the difference if it was a rubber stamp?

Flournoy: The Court not being open, the Judge not being present, there was in fact no opening and adjourning of court, there was no term of court, if there was no term of court there was no trial.

Court: Can you come in and say on petition for habeas corpus, that these minutes show there was no term of court, or that there is not a word of truth in them?

Flournoy: I don't think there is any doubt about it.

Court: You can prove all the statements in the book, anything all of the record, you can ask the question, it will be objected to, and I will sustain the objection to it.

Examination of Mr. Marsh continued:

Q. At the bottom of page 372, Volume F, Mr. Marsh, was the Court open whether there was any business to be transacted or not?

A. Yes sir.

Q. All in the same manner, formally in the court room?

A. Usually, yes sir.

Q. When you set the rubber stamp which I refer to as No. 1, at the bottom of page 372, Volume F, of your minutes was the court open at the time that stamp was formally put upon the book.

A. No sir, but every time formal orders were entered on the minutes the Judge was present in the Court house, in the City of Pensacola.

Q. You mean the formal orders entered every day upon the minutes?

A. Yes sir, the formal orders opening court were entered with the rubber stamp. That stamp was used only when the Judge was in the Court house.

26 Q. That stamp was not used unless the Judge was present. Present in the Court house?

A. No sir.

Flournoy: This is a stipulation of Counsel containing a synopsis of the minutes from November 6th to November 14th, 1906. Dis you prepare this?

A. Yes sir.

Q. It is correct? (* * *)

A. Yes sir, I examined it, it is correct, subject to verification.

Q. The stipulation contains a correct statement of each proceeding?

A. Yes sir, subject to verification. (Not necessary, as whole record was used.)

Q. The other stamp you used——

A. The next stamp appears on the minutes on page 6 volume G, bottom of the page, contains as follows, (reads stamp contained in this transcript marked *No.* #2).

COURT: Is that not covered by the stipulation?

FLOURNOY: Yes sir.

COURT: Well I want to know what is the use of all this oral evidence about the rubber stamp?

FLOURNOY: This rubber stamp was used on June 7th, 1906, when the Judge of the court was out of the City.

COURT: I admit it subject to the objection of the District Attorney at any time.

FLOURNOY:

Q. Was the Judge out of the City at the time this rubber stamp #2 was used?

REESE: Just a minute, what is that order about? I want to enter the objection to this.

Q. Every time that rubber stamp, #2, was used was the same condition existing as to the Judge?

A. Yes sir.

Mr. REESE:

Q. (Reads contents of stamp #2.) Every time that stamp was used you say the court was out of town?

A. Yes sir.

COURT: He has already testified to that. The rubber stamp makes no difference.

Q. What was the purpose of opening with this rubber stamp?

A. To comply with the order made June 6th, 1906.

Q. What was that order?

27 A. This ordered that opening the court for business by the presiding Judge of this Court, in accordance with rule 13 of this Court. Attached hereto, "It is ordered that pending the absence of the presiding Judge of thi*d* Court that the same be opened and adjourned in pursuance of rule XIII of the rules of practice of this Court."

Q. Did you actually open court formally you and the Marshal in the Court room?

A. ——.

COURT: Hold on, that is not necessary. I sustain the objection, and give you an exception. I would not cut you out of an exception, but whether the entries were made with a rubber stamp or not I don't think that was material.

Flournoy: One more question.—How many sessions of open court were held here between the 6th of March and the fourteenth of November, 1906?

A. There was one called on or about the first of April, rather during the month of April.

Court: You are trying to prove something by parol that is contained in the minutes.

Reese: I want to move the Court to rule on that question just answered as to the Court's orders relative to the court's not being opened.

Court: My idea is that the minutes show what was and was not done, the proper way to prove this is by the minutes.

Reese: I want to move to strike out that testimony where counsel is trying to contradict the minutes.

Court: I sustain the objection.

Flournoy: You sustain the objection? That is an important ruling.

Court: I don't think so, I strike it out, allow the exception. I won't allow anything except what the minutes show. Tell me, what are you trying to show?

Stallings: This is it, to put the minutes before this Court just as they are by introduction of the minutes, of course, you can't go behin*g* the minutes, we want to know whether the court was in sessions when the Judge was not in the city.

Court: I can allow you to prove that the Judge was in Campscatca or out of the City.

Stallings: That's what we think. And whether or not that order of the 23rd of October kept the court open. The minutes state that the Judge was absent.

Court: I think the Judge might not have been personally present, yet technically he was, that is not a matter for proof it is a fact.

Stallings: That comes to it, the certain day, October 23rd, if that day there was any session at all.

Court: Well what of it? Suppose there was no order to
28 *to* open court.

Stallings: Then my contention is that there was no session of court.

Court: The Clerk testified that there was one. I am not going to allow the question to be asked. Take your exception and go ahead.

Flournoy to Mr. Marsh:

Q. What was the purpose of using these two rubber stamps.

A. One to certify that the Court was in session, Judge present, and the other when the Judge was not in the City.

*** Q. The one certifies the Judge, Clerk and Marshal were present and the other that the Clerk and Marshal only were present?

A. Yes sir.

** Reese: I object. Objection sustained.

Court: Not- an exception.

Q. On the 14th day of November, Mr. Marsh, 1906, you have the minutes before you, Volume- F. & G., is there any record of the return of an indictment against Harlan, Hilton, and Huggins, and Jub Howell (W. S. Harlan, C. C. Hilton and S. E. Huggins).

A. This volume shows no record of any criminal proceedings, while volume C. shows a record of all Criminal proceedings.

Q. I am speaking of the minute book, is there any record in that book volume G of a prosecution against W. S. Harlan, C. C. Hilton and S. E. Huggins?

A. This book shows no record of any criminal proceedings.

Q. *** Volume- F. and G. were the minutes which you made during the trial?

A. Yes sir.

Q. ** And Volume C is the typewritten volume typewritten and bound after the juries were discharged and the session of court were over with.

A. Yes sir.

Q. There is nothing in Volume G to show an indictment against those parties?

A. No sir.

Q. But the notice of grand jurors is recorded in this minute book, should not the record of prosecutions be on this book?

A. I said no criminal cases, this, the grand jury, is a civil proceeding.

COURT: I don't know what the practice is, with regard to the minutes, but the minutes should show a grand jury was called, how many men were present when they returned a true bill into court and probably the number of indictments. But I thought you had a stipulation.

FLOURNOY: We have embraced in four or five pages, in the stipulation the contents of 150 pages.

COURT: Go ahead. (The stipulation was not finished, and as the whole record was included there is no necessity of it.)

FLOURNOY: We want to offer this record that there was no presentation of the grand jury.

29 COURT: It is admitted by the stipulation, what is the difference?

FLOURNOY: To prove what is in the record.

COURT: That is a matter of law.

FLOURNOY: I will ask what is in that record to certify and prove the return of any indictments by the grand jury?

Q. Is it recorded in this volume, (the record of any indictment against the defendants mentioned above)?

A. Volume G.? Minute book? No sir.

Q. That is the minute book of your United States Circuit court?

A. Yes sir, Volume G.

Cross-examination of Mr. F. W. MARSH by Hon. R. POPE REESE:

Q. This minute book G is the one you have been testifying about is the one about which the stipulation was made between counsel in this case, does it show a record of the indictments as found by the grand jury?

A. There appears the entry following prosecutions and presentations of the grand jury which are summary dispositions of all cases disposed of.

Q. I mean as the indictments are presented?

A. No sir.

Q. Have you a record book of this court that shows that?

A. Yes sir.

FLOURNOY: We want to ask when was that record book, Volume C made.

COURT: You can ask him that afterwards.

REESE:

A. Have you record of an indictment as found in this case against W. S. Harlan, S. E. Huggins and C. C. Hilton and Jub Howell?

A. Yes sir, #597 the record of which appears on page 351 of this the Criminal Minute book C of the United States Circuit Court at Pensacola, Fla. attached and which reads as follows:

"Volume C, Page 351.

THE UNITED STATES
vs.
W. S. HARLAN et al.

At a stated term of the Circuit Court of the United States for the Northern District of Florida, begun and held at the City of Pensacola, within and for the District aforesaid, on the fourteenth day of November, in the year of our Lord one thousand nine hundred and six—present, the Honorable Charles Swayne, Judge presiding—among the proceedings had were the following, to wit:

No. 597.

UNITED STATES
vs.
W. S. HARLAN, S. E. HUGGINS, JEB S. HOWELL, and C. C. HILTON.

Indictment: Violation 5440-5526, R. S. U. S.

And now at this time the Grand jury of the United States, duly chosen and empanneled and sworn in said Court at said term thereof, came into open court and presented an indictment as above set out by indorsement, and which was further indorsed, to wit: "A true bill, L. M. Davis, foreman. Filed November 15th, A. D. 1906. F. W. Marsh, Clerk."

Q. When was that entry made?

A. When it was returned (When the indictment was returned).

(By Court:)

Q. Was it made during that term of Court?
A. Yes sir.

(By Mr. Reese:)

Q. Is there any place in that book also showing any record of an indictment, or the presentment of an indictment by the grand jury of Robert Gallagher and several other defendants?

A. There is an entry # 590, an indictment against Robert Gallagher and several other defendants, on page 343 of Volume C, which reads as follows, to-wit:

Volume C, Page 343.

"United States
vs.
W. S. Harlan et al."

At a stated term of the Circuit Court of the United States, for the Northern District of Florida, begun and held at the City of Pensacola, within the District aforesaid, on the tenth day of November, in the year of our Lord, One thousand, nine hundred and six

Present the Honorable Charles Swayne, Judge presiding, among the proceedings had were the following, to-wit:

No. 590.

United States
vs.
W. S. Harlan, Robert Gallagher, Oscar Sandor, E. Newlander, C. C. Hilton, Jebb S. Howell, John Atwell, Walter E. Grace, S. E. Huggins, Archie Bellinger, Harry Halverson, One Angelo, One Lamater.

Indictment: Violation Section- 5440-5526, R. S. U. S.

And now at this time the Grand jury of the United States, duly empanelled and sworn in said Court at said term thereof, came into open court and presented the foregoing indictment, indorsed "A true bill, L. M. Davis, Foreman, of the grand jury. Filed November 10th, A. D. 1906. F. W. Marsh, Clerk.

Q. When was that entry made?
A. During the term of Court at which the indictments were returned.

Reese: It is admitted that 590 and 597 were the indictments on which the defendants were tried. 590 and 597 were demurrer to and the demurrers were overruled.

Court: This record shows the criminal proceedings, the return of the indictment in the two cases?

A. Yes, sir.

Flournoy: We object to anything contained in the Criminal minutes, Volume C because it is not a minute book, it is simply a typewritten account or enrollment of the happenings of the court. Being subsequently typewritten and entered. It is not an original entry.

31 Court: That is nothing, the minutes of course, cannot be kept up with the proceedings of the court and can be entered after the proceeding is had during the same term of Court.

Flournoy: Has that volume ever been entered under the rules of Court?

A. It is prepared under the rules of Court.

Court: That is the book in which you record the minutes in the criminal prosecutions?

A. Yes sir.

Q. That is kept under the rules of Court.

A. Yes sir.

Q. Entered during the term of Court?

A. Yes sir.

Flournoy: He could enter it in November then though the trial had been in April *on* March of that year.

Court: During the term of Court. The term of Court is that time when the Court can with authority exercise its judicial functions. It don't make any difference just so he entered it during a term of Court.

Flournoy to Marsh:

Q. Can you tell when number 590 recorded in Volume C, page 343, was entered,* when that part of the volume was typewritten?*

A. On or about the fourteenth or fifteenth of December, by myself.

Q. Referring to #592 and 597 Volume C page 351 can you tell me when this record was made this part of volume C was typewritten?

A. I made it on the very day of sentence or the day after.

Q. After and not before sentence?

A. Yes sir.

Q. Is there any one else who prepared a portion of this record?

A. Yes sir, I prepared a portion of it and a portion was prepared in my presence.

Q. Did you verify this record with the original?

A. I prepared a part of this and what I did not prepare I verified, yes sir, I verified it all.

Flournoy: This is a mere memoranda book, I take the position that this is not a minute book, the matter is in typewriting, only and made up after the session and bound in leather by the binder.

Court: You take the position that if the Court has part of its minutes in one book they would not be the minutes of the Court?

32 Flournoy: They were not made during the term of Court, not until after the sentence had been rendered.

Court: This is al- right if it was made during a term of the Court. Suppose this. It appears the term- of my district are designated by statute on the first Tuesday in December, I make a whole lot of orders before I leave Montgomery, there is no special entry made on the record, these would not be void because not entered until I return. If I leave them go till January they would be void, but if entered before the term expires wouldn't they be valid.

Flournoy: You can go up there, if you find you have made a grave mistake you could change the entry and make the correct one, but this is mere memoranda.

Court: The court cannot see it that way. You move to rule out that evidence and record, I overrule your motion and grant your exception.

Reese:

Q. Mr. Marsh, on these records of the United States Circuit Court Criminal Docket, on page 158 we find the filing of an indictment # 597 and——

A. Yes sir.

Reese: We now desire to offer in evidence this page 158 of Criminal minutes.

Admitted and attached hereto, marked Exhibit "B."

Q. This is the original memoranda taken at the trial of the case?

A. Yes sir.

Q. It is from this that you made the entry in volume C of the minutes?

A. Yes sir.

Q. I will ask you to examine page 158 with regard to # 597 and say if there is an entry that the grand jury presented an indictment against W. S. Harlan, C. C. Hilton, S. E. Huggins and Jebb S. Howell?

A. It appears it is an indictment for violation of section 5440 R. S. U. S.

Court: Don't the record show all that, the minutes——

Reese: Al- right sir. We offer in evidence a copy of the memoranda on page 158 with regard to 597. We also offer a copy of the record of page 157 in the regard to indictment 592 and 590, and mark it Exhibit "C" attached hereto. We desire to offer this same book of original entry of the progress of the case as to 590 the case of United States versus Gallagher et al., as shown by this book.

Flournoy: No objection.

33 Miss A. G. CHIPLEY, Deputy Clerk, U. S. Circuit and District Courts, Pensacola, Northern District of Florida, being called and sworn, testifies as follows:

Direct examination by Mr. W. W. FLOURNOY:

Q. Miss Chipley, what is your official position?
A. Deputy Clerk United States Courts.
Q. Circuit Court.
A. Yes sir.
Q. This Court?
A. Yes sir.
Q. Here is volume G and here is Vol. C, which we have referred to, did you prepare any of these minutes?
A. I prepared this.
Q. You prepared the whole of Volume C?
A. Yes sir.
Q. When?
A. As rapidly as possible after court.

Cross-examination by R. POPE REESE:

Q. We have no cross examination.

Redirect examination by W. W. FLOURNOY:

Q. Did you have charge of the papers of the District Attorney's office when he was out of the City?
A. He asked me to open his mail, his official mail.
Q. Have you the minutes of the grand jury for the year 1906?
A. I have.

We offer in evidence a copy of the minutes of the grand jury for November, 1906, and mark it Exhibit "D."

MR. REESE: We also desire to offer in evidence that portion of the grand jury's report which has been presented by counsel showing the action of the grand jury with regards to a case against Robert Gallagher, W. E. Grace and Oscar Sandor.

COURT: I will let that record in as a book of which the court will take judicial notice, and the lawyers may comment on its contents.

REESE: Only in connection with this case, however, Harlan et al. and Gallagher et al.

COURT: All entries in that book of the case now on trial will be admitted subject to the right of both parties to object.

FLOURNOY: Just let the record show we offered all the entries referring to this case, the cases of Harlan and Gallagher. (See whole minutes of Grand Jury for the term, marked Exhibit "D," attached hereto.

COURT: That book, the whole minutes I will allow you the certified copy if you want it, anything in connection that covers this case, anything in the record with regard to it or actually clearly connected with it you can use.

34 Mr. W. W. **Flournoy** recalls Miss A. G. **Chipley**:

Q. What do you mean by "when court is closed," "after Court"?
A. After the trial.
Q. After the jury is discharged?
A. Yes sir, after the jury is discharged.
Q. You mean the petit and Grand juries?
A. Yes sir.

Mr. **Flournoy**: We offer in evidence the printed record of the proceedings of the lower court and mark them Exhibits E and F in the cases of U. S. vs. Gallagher et al. and U. S. vs. Harlan, Hilton and Huggins.

Both admitted by the court.

Stallings: In addition I want to offer the amendment.

Court: What is the amendment?

Stallings: (Reads amendment).

Flournoy: We offer in evidence a letter from F. N. Carpenter, Secretary to the President under date of September 23, 1909, to Hon. Jas. P. Talliaferro, Jacksonville, Fla., relative to the commutation of the sentence of Harlan, Hilton and Huggins and marked Exhibit G attached hereto.

Reese: We object to the introduction of this letter.

Court: I will admit it for the time, and give you the same exception.

Flournoy: I just wanted to show by this letter that it was written at the request of Mr. Harlan.

Reese: I consider it immaterial.

Court: I have admitted it subject to right of Government to except to it.

Mr. **Morris Bear**, called for the defendants and duly sworn testifies as follows:

Direct examination by Mr. J. F. **Stallings**:

Q. Were you a member of the Grand jury at the term of United States Court here in 1906?
A. Yes sir.
Q. I believe that grand jury was called in November?
A. I don't remember.
Q. Do you recall on the 12th of the month of November, 1906, the vote being taken on an indictment against W. S. Harlan et al.?
A. Yes sir, I remember a vote being taken by the grand jury.
Q. On the fourteenth, two days later, do you remember a bill being presented, an amendment to a bill being presented on that evening before you.
A. Yes sir.
35 Q. Do you remember sending down two or three times for the amended bill to be brought up?
A. Yes sir.
Q. Who brought the bill up to you?
A. Judge W. B. Sheppard.

Q. You were present when this bill was presented?
A. Yes sir.
Q. I will ask you whether or not the grand jury voted on that bill or not? The bill against Harlan and others?
A. No sir.
Q. You voted on the bill when it came up with the amendment?
A. No sir, not at that time.

Cross-examination by R. P. **Reese**:

Q. You were a member of the grand jury in November, 1906?
A. Yes sir.
Q. You came into the Court room with the grand jury when they presented the indictment?
A. Yes sir.
Q. Your name was called?
A. Yes sir.
Q. The indictment was presented in the Court room that day, the fourteenth? Delivered by your foreman?
A. Yes sir.
Q. I am speaking of the indictment against Harlan, Hilton et al.
A. ——.

Flournoy: We object and want to strike it out because——
Court: I admit it and do not rule on it.

Q. Your foreman at this time presented this indictment when you all came into the court room?
A. We came into the court room and the foreman presented the indictments of the grand jury.
Q. At that time did he present #597?
A. I think so.
Q. You did not look at the indictments you presented?
A. No sir.

Redirect examination.

Flournoy:

Q. You did not know what it was?
A. No sir.
Q. Never read it over?
A. No sir.

Mr. **George Turner** called and duly sworn testifies as follows:

Q. You are a resident of Pensacola and have been for a number of years?
A. Yes sir.
36 Q. Were you a member of the Circuit Court grand Jury in the fall of 1906?
A. Yes sir.
Q. You remember a bill being voted on or about the 12th of November against W. S. Harlan and others?
A. Yes sir.

Reese: We object to that manner of examination he is leading the witness.

Court: Try to govern yourself better.

Q. On the fourteenth of the month the amendment was *was* there any presented on that day?
A. Yes sir.
Q. Who by?
A. Mr. Sheppard.
Q. What was said to be an amendment of the original bill?
A. Yes sir.
Q. I will ask you to state to the Court what time that was?
A. About 4:30 o'clock in the evening.
Q. Did you hear any evidence on the amendment?
A. No sir, not to the best of my recollection.
Q. I will ask you to state to the best of your recollection, whether or not this amendment was voted on by the grand jury?
A. No sir, it was not.
Q. Did you immediately come down, into the court room, and present it?
A. Immediately.
Q. I will ask you whether or not you were waiting for the District Attorney to bring the amendment up?
A. Yes sir, we were waiting some of the jurors were anxious to get away, and we were held up waiting for it.
Q. Did Judge Sheppard advise you it would be in later?
A. Yes sir.

Cross-examination by Mr. Reese:

Q. Did the grand jury come before the court and present this indictment?
A. Yes sir.
Q. Did you accompany the grand jury?
A. Yes sir.
Q. What was done by the grand jury when they came into the Court room?
A. I don't remember exactly, the foreman returned his papers over to the Judge or District Attorney, I think the foreman brought these papers down he came down with the grand jury.
Q. The role was called?
A. Yes sir.
—. By the Clerk?
A. Yes sir.
Q. They answered their names and the foreman presented this indictment to the Court?
A. Yes sir.

37 Court: You make the same objection?
Flournoy: Yes sir.

Cross-examination by Mr. Stallings:

Q. He asked you about what was taking place in the court room?
A. Yes sir.

Q. Anything else about this bill?
A. I don't remember anything.
Q. Nothing said about this bill?
A. I don't remember that there was.
Q. Do you know what papers he presented?
A. Some other cases we had disposed of and this amendment.

Recross-examination by **Reese**:

Q. Do you remember on that occation then you came into the Court room, the court asked you in practically these words, "gentlemen have you anything to report?"
A. Yes sir, I think so.
Q. Was there any response by anyone?
A. I don't remember I suppose the foreman answered, and presented these indictments.

Redirect by Mr. **Stallings**:

Q. You said nothing?
A. No sir.
Q. Your fellows?
A. No sir.

Mr. **Lee Daniels**, called and duly sworn testifies as follows:

Direct examination by Mr. **Stallings**:

Q. Were you a member of the United States Grand jury for the Circuit Court of the United States of the Northern District of Florida in the fall of 1906?
A. Yes sir.
Q. Did you have any position in that grand jury?
A. Yes sir, I was Clerk.
Q. Did you formally vote on a bill against Harlan and others on the 12th of November, 1906?
A. I don't recollect the day but I recall the vote being taken on the bill.
Q. On the Fourteenth or two or three days later did, or do you remember just before adjournment of the grand jury a statement by the District Attorney Judge Sheppard.
A. Yes sir.
Q. What did he say? If you recollect?
A. My recollection is the Judge Sheppard was in consultation three or four times with us that evening. The first time he said he had an amendment he wished to present and wished us to remain to make a return there of the amendment.
Q. That was the amendment to the indictment against Harlan and others?
38 A. Yes sir.
Q. Did you wait?
A. Yes sir, we did.
Q. Did you send down several times to know if it was ready?
A. My recollection is we sent down several times to know whether it was ready, we were all anxious to get away.

Q. Were you in the grand jury room when it came up?
A. I was.

Q. Were your fellows there, I mean in the Court room?
A. Yes sir.

Q. I will ask you to state to the court if there was *na*ything like a vote taken?

A. There was no vote taken.

Cross-examination of Mr. Daniels by Mr. **Reese**:

Q. You came into the court room with the grand jury to make the presentment of this indictment?

A. Yes sir.

Q. The rol*e* of the members of the grand jury *were* called?
A. Yes sir.

Q. And an inquiry made by the court if you had any presentments to make?

A. Simply to the best of my recollection; yes sir.

Q. Was any presentment made by the grand jury at that time?

A. I can only answer to the best of my recollection, I don't recollect distinctly the presentation of the grand jury of this particular indictment. The foreman presented some bills.

Redirect by **Stallings**:

Q. The rol*e* of the grand jury was called?
A. Yes sir.

Q. Did you not answer personally?
A. No sir.

Q. Then the foreman passes up some papers to the court or District Attorney?

A. Yes sir.

Q. And the members of the jury pe*r*sented this amendment and the foreman gave it to the Court?

A. That is my assumption, he handed in some papers. I suppose he handed in the indictment amended.

Court: You both can make the same objections now.
Reese: Yes, sir, I want to renew my objections now.

Mr. **Golsen** called and duly sworn testifies as follows:

Direct examination by **Stallings**:

Q. You were a member of the grand jury of the Circuit Court of the United States for the Northern District of Florida, in the fall of 1906?

A. Yes sir.

39 Q. You recall on or about the 12th of the month of November, 1906 voting on a bill against Harlan and others?

A. I don't recall the day of the month, but I recall voting on the bill.

Q. Do you remember a couple of days later before the grand jury adjourned the District Attorney of this District came before you, the grand jury.

A. Yes sir.

Q. Did he make a statement that he wanted you to wait on an amendment he had?

A. I know we waited for him, we had some other business, afterward, he asked us to wait a little longer.

Q. Did he make a statement about an amendment to a bill?

A. My best recollection is that he did.

Q. I will ask you on that occasion if you or the grand jury took any vote at that time?

A. I don't remember whether we took a vote at that time.

Q. What is the best of your recollection?

A. That we did not take a vote.

Q. Did you stay very long after the amendment was brought in the grand jury room?

A. A very short time.

Cross-examination by Mr. Reese:

Q. Do you remember what was done and said by the foreman at the time this indictment was presented in the grand jury room? the one you testified about on the fourteenth?

A. There was some little discussion and it was done someway I think by assent.

Q. You did vote on the indictment of the twelfth?

A. Yes sir.

Q. Was this an amendment of the indictment or a new one?

A. An amendment to the original indictment it was called.

Q. After this ma-ter was presented to the grand jury what was done by the grand jury?

A. Mr. Sheppard came in with a paper and there was something said about the wording of it.

Q. Was it explained to the Grand Jury?

A. He just said a little about the wording of it, I am not positive.

Q. Was there a consultation between the foreman and the members of the grand jury?

A. I think there was.

Q. Was the indictment agre*d*d upon as presented?

A. ——.

Flournoy: That is not a proper question.

Court: The question is whether it was voted upon. You can get tha- out on cross, I will allow great latitude on that.

Q. Was the indictment as presented agreed upon by the members of the grand jury?

A. I would not say whether it was or not.

Q. Was there any objection on the part of the grand jurors to it?

A. I don't think there was.

40 Court: Did you take any vote?

A. My best recollection is that we did not, we were standing in the room, it was presented and the wording was explained, a good many of the jury were anxious to get away, they just assented.

Q. Did the grand jury say it' would be al- right?

A. I think so, I am not positive.

Q. There was no objection to it, did the foreman sign it in the presence of the grand jury?

A. I would not say.

Q. Did you not see the paper?

A. Yes sir.

Q. Did the jury co*k*e into the court room?

A. Yes sir.

Q. They were polled.

A. Yes sir.

Q. Was there anything done by the Court.

A. The court made some remarks to us and we were discharged.

Q. Did any one inquire if you had anything to report?

A. I think the Judge asked that when we came in.

Q. What was done then?

A. Our foreman presented him with some papers.

Q. Did he present this indictment.

A. I suppose he did.

By COURT:

Q. Do you remember whether or not an indictment was broought back to you, whether that was the original indictment that they had added something to or a new one?

A. No sir, it was not the original one. To the best of my recollection it was an amend*ed*ment to the original one.

STALLINGS, redirect:

Q. You cannot tell whether it was a new one or not?

A. No sir, I cannot.

Q. I ask you about the judge calling the names of the jury in the court room?

A. Yes sir.

Q. And did you answer?

A. Yes sir.

Q. This is what you mean, the Judge made the inquiry if you had anything to present and your foreman answered he had. Then the Judge made a little talk just before he discharged you abou-your faithful duty, and that you could now return to your waiting family?

A. Yes sir.

Q. The foreman gave him some papers when you came in?

A. Yes sir.

Q. You did not know what these papers were?

A. No sir.

Q. That is all you know?

A. Yes sir.

Mr. L. M. Davis, called and duly sworn, testifies as follows:

Direct examination by J. F. Stallings:

Q. You are a resident of Pensacola, Fla.

41 A. Yes sir.

Q. Do you remember the United States Grand Jury, and were you a member in the fall of 1906?

A. Yes sir.

Q. You were foreman of that jury?

A. Yes sir.

Q. Do you remember voting on a bill against W. S. Harlan and others on the twelfth of November, 1906?

A. Yes, sir; that bill was returned by us.

Q. That bill was returned by you into the court on the twelfth?

A. Yes sir. That bill was returned on the 12th of November.

Q. On the fourteenth *of* two or three days later did the District Attorney bring any amendment to this bill?

A. On the fourteenth I told the District Attorney Mr. Sheppard that we would finish up the business that evening, before noon, Mr. Sheppard said I will have an amendment to an indictment for you this evening, It will take some time for the typewriter to draft it, and you had better come back at three o'clock, for the purpose of fixing it.

A. After you returned was there any inquiry sent down to know if it was ready?

A. Mr. Sheppard told us we would be delayed a few minutes, some of the boys were anxious to get away, we sent two or three times to know if it was ready. A little later Mr. Sheppard came in with the amended indictment.

Q. I will ask you whether or not that indictment was voted on by the grand jury?

A. I cannot answer whether or not. I think we took no rising vote on the indictment. I asked if it was consented to and it was agreed that it was to be signed by the foreman.

Q. No vote was taken?

A. I think probably we took no vote formally.

Q. The grand jury went out a little after that.

A. Yes sir.

Q. How lon*d* did the grand jury stay there after the amendment was taken up by Judge Sheppard?

A. About fifteen minutes I guess. A very short time.

Q. Did you sign it?

A. Yes sir I signed it.

Cross-examination by Reese:

Q. As I understand you Mr. Davis the amendment to the indictment was submitted to the grand jury and consented to and you signed it?

A. Yes sir.

Q. What was done after that?

A. The grand jury was brought to the court room made the presentements and after remarks of the Judge was discharged.

Q. Do you recall whether or not you had any presentments to make at that time?

A. I don't recall any particula- one.

Q. You don't recall what took place?

A. I don't know, I presented these papers here to the court. I don't recall all the names of or the numbers of the cases.

42 Redirect examination of DAVIS by Mr. STALLINGS:

Q. I will ask you if that was read over in the grand jury room?

A. Judge Sheppard read it over there.

Q. It is your recollection that he read it over?

A. Yes sir, and called attention to the proposed amendment, it was passed around among the members, I looked at it myself.

Q. It was read as a whole?

A. No sir, simply called attention to the change.

Q. You said it was assented to, you mean there was no objection to it?

A. I mean I asked if there was any objection to it, we took no rising vote on it, it was done by consent.

Q. What did you say to the jury about it?

A. I asked if there was any objection to it, and a good many said none, I said I will sign it.

Q. There was no objection to it and you just signed it?

A. Yes sir.

—. It was done by consent?

A. Yes sir.

Mrs. A. G. CHIPLEY recalled.

Direct examination by FLOURNOY:

Q. Do you recall the session of court in fall of 1906?

A. Yes sir.

Q. You remember on -he fourteenth of the month of November, the amended indictment No. 597.

A. Yes sir I remember it perfectly.

Q. Do you remember the time of day it was when you wrote it?

A. Yes sir, while Mr. Marsh was at dinner, a part of it.

Q. Who dictated it, Judge Sheppard? Or Mr. Russell?

REESE: We object to this.

COURT: I don't think it material. I sustain the objection, and give you the exception.

STALLINGS: We desire to offer in evidence indictment number 590 against W. S. Harlan, Gallagher, Grace and others. It was filed on the 10th of November, 1906 and mark it exhibit H.; and indictment 592 against Harlan, Huggins Hilton and Howell, and filed on the 12th of November and mark it exhibit I: and indictment 597 against Harlan Huggins, Hilton and Howell, which was filed on the fourteenth of November, 1906 and mark it exhibit J, together with the endorsements on each of the said indictments.

Reese: We object to the introduction of 592 it is not in connection with this case.

Court: All three indictments 590, 592 and 597 are admitted.

Stallings: We offer the order of Judge Shelby of October, 1906 calling for the grand jury and mark it exhibit K: and the order of Judge Shelby in October, 1906 calling for the petit jury and mark it exhibit L. I would like to ask one question of Mr. Marsh.

Q. I will ask you Mr. Marsh, if you examined the record of the court at direction of counsel?

A. I did.

43 Q. I will ask you if this is the only order for the holding of a term of court, that term of court in November, 1906?

A. ——.

Reese: I object.

Court: Sustains objection—that's matter of record.

Stallings: To make the matter more clear I will read this letter from Judge Shelby as to the grand jury and the letter from Judge Shelby as to the petit jury.

Mr. Reese: To make the record complete I desire to offer in evidence, a portion of Criminal minutes, Volume K 237 to 245 inclusive, and mark it exhibit M.

Mr. Marsh recalled.

Examination by Mr. Reese:

Q. By whom was that record made? Vol. K?

A. It was made in my office under my authority, part by me and part by my deputy.

Q. Is the date of the entry given?

A. Entered on the 21st of December, 1906.

Q. That is the actual date that the minutes were made?

A. Yes sir.

Flournoy: We object to that record Volume K, because it is not a book of first or original entry. It is merely a leather bound typewritten final or enrolled record.

Court: Note an exception.

Flournoy:

Q. This Volume K is simply the final record of the Circuit Court?

A. Yes sir.

Q. It is the final record wholly typewritten after the trail and after the -ession and after the juries are discharged, and it is bound in a substantial leather binding as a final or enrolled reocrd

A. Yes sir.

Court opened, 2 P. M. November 2, 1909.

Mr. REESE: I want to introduce rule 13 in evidence.
COURT: Consider rule 13 in evidence.

MARSH recalled to the stand.

Examination by Mr. FLOURNOY:

Q. When you received that letter from Judge Shelby in October 1906 where did it come from? Judge Shelby was not in Florida was he?
A. My best recollection is that it came from Huntsville, Ala. he issued the order there.
Q. Can you tell what time in the spring of 1906 United States Circuit Court was held at Tallahassee by Judge Swayne?
A. I can tell by a moment's reference to my minutes in my office.

(Here Mr. Marsh went into his office and referred to memoranda of his report to the Department.)

44 Q. Court could not be held at Tallahassee, and here at Pensacola by the same officers at the same time, could it?
COURT: What's the object in proving this, what bearing has it?

FLOURNOY: We want to show that they could not hold court here and at Tallahassee at the same time, and that the minutes certify that court was opening and adjourning here in the City of Pensacola, when as a matter of fact, the same Judge, Clerk and Marshal were actually holding Court at Tallahassee.

MARSH:
—. ——.

A. Spring term 1906, there is no date on which the Judge was presiding during the quarter ending December 31 1906. Court was in session at Tallahassee, actually trying cases on May 13th 14th, 15th and 16th 1906.
Q. Who presided at that term of Court? Judge Swayne?
A. Yes sir.
Q. Were you and the Marshal Mr. McGouring both present at Tallahassee at that term?
A. Yes sir, both were there.
Q. I want to ask you Mr. Marsh if Judge Swayne, then Judge of this Court did not leave this state, on or about the 7th of June, 1906 and remain away till along about the 4th of November, 1906.
A. That is my recollection of it.
Q. He was in the state of Deleware, was he?
A. He went North somewhere, he was probably in Philadelphia at that time.
Q. There was no -ther Judge that Judge Swayne who held U. S Circuit Court here during the year 1906?
A. No sir.
Q. You were the only Clerk of the Circuit Court during that time.
A. Yes sir.

Q. And Mr. McGouring was the only Marshal of the Circuit Court? Of the Norther- District of Florida?

A. Yes sir. But my deputy was Miss A. G. Chipley and his was H. Wolf.

Mr. Flournoy: The question is whether this thing, this book, is worthy of being called a record, that is should this volume subsequently made doubtless with calendar in *yadn* to avoid stamping it on Sunday should be dignified by being called or labelled a record or minutes?

Court: What does that record, (Vol. K.) show as to the filing?

Marsh: It shows that on December 21, 1906 that it was filed in the presence of the grand jury.

Mr. Reese: Reads Volume K. page 240 (See exhibit attached hereto marked exhibit M).

Flournoy: This Volume K. Is the final record is it not?

A. Yes sir.

Q. It is all typewritten by you or your deputy after the trial and then bound in leather by the binder as the final or enrolled record is it not?

A. Yes sir.

Q. There is no handwriting in it?

A. No sir.

45 Q. That is the only record which shows the return and presentment of the indictment by the grand jury.

A. Yes sir, except volume- C. P. 343 and 351 and criminal minute page 158 Exhibit "R" attached hereto.

Flournoy: Relative to these records I have just now learned how they were kept and manipulated. Here is this record Volume G entered from time to time, with a rubber stamp and here is the certificate upon it that the Clerk and Marshal were here at and in this court and the Clerk has testified that they were in fact at Tallahasse, at the same time. I merely wish to show that this rubber stamp was used when no one was present upon the particular day that it certifies that they were opening and adjourning court.

Court: I don't want to interrupt you, but what have these facts to do with it. There is no evidence that this indictment was not returned by the grand jury, not that the District Attorney did not present something to that grand jury and ask for action on it, there is nothing on which you can base an argument that there was no return of an indictment. There is no question whether a majority of the grand jury passes on that indictment.

Flournoy: I have proved that, there is no evidence either that one was returned unless it is in this subsequently prepared final record Vol. C and K.

Court: The question you are endeavoring to answer is whether the grand jury voted on this indictment (Referring to 597).

Flournoy: Precisely so, and I say further that there was no term of court and no indictment. There must be some record evidence of the finding and returning of the indictment and the order of the judge calling a grand jury and term of the court must be made by a judge who is at the time of making the order in the District of the Court for which the order is made.

COURT: Do you mean to say that the Judge presiding and residing in this District cannot go out of the District and while out make and send an order back to the Clerk of this Court for the empanneling of a grand jury?

FLOURNOY: Yes sir such order would be made without the jurisdiction of the particular court and therefore would be void.

Mr. REESE: It has just been called to my attention with reference to the order in the minute book volume F. that a rule was in existance at the time allowing and making provisions for a term of court at Tallahassee and at Pensacola.

Reads from page 264 Volume F, which rule is as follows to wit:

See Exhibit "N."

46 COURT: What was the rule of Court.

REESE: The rule of Court was made after that this was the only order in this respect then in existance.

COURT: Admit it then subject to objection. Mr. Flournoy when did you become acquainted with all these facts, how lately that no vote was taken on the indictment 597 in the grand jury room?

Mr. FLOURNOY, being duly sworn, says:

My recollection is that the first intimation I had of it was last Saturday, October 30th, 1909. I asked the Deputy Clerk, Miss Chipley, several days prior to examine the minutes of the Circuit Court and to give me a tabulated statement. Last Saturday, I received the information that there was no evidence of a vote on this indictment. I remember the day we were arguing the demurrer on the evidence on the fourteenth of November, 1906 there was a stop in the proceedings and the District Attorney now Judge Sheppard, went out and got his amendment to the original indictment and brought it in, and we proceeded to demur to that new indictment. The demurrer was overruled, and we proceeded immediately to the trial, on the new indictment, 597.

Recollections of that circumstance on the 14th of November, 1906, made me suspicious that there might not have been in the haste, any vote on the new indictment. I have just found the record of the grand jury. I did not find that record until, I believe, last evening. That was the first idea that I had that there was no vote.

COURT: Mr. Reese, do you wish to ask him any questions.

REESE: No sir.

Thursday Morning November 4th, 1909, the following evidence was taken upon agreement that it should be considered as having been taken before the decision yesterday.

Mr. F. W. Marsh, clerk, recalled by the Assistant Attorney General Mr. Reese for the Government.

Mr. Reese:

Q. Mr. Marsh, during the year 1906 did you have a deputy in charge of your office during your absence from Pensacola.

47 A. Yes sir, Miss A. G. Chipley.

Q. During the year 1906, did the United States Marshal have a deputy here in charge of his office during his absence from Pensacola?

A. Yes sir, the whole time, Mr. H. Wolf.

Cross-examination by Mr. Flournoy:

Q. Did these deputies actually open and adjourn court?

A. I was absent and don't know. That is the report on which I made these entries.

Q. They reported to you that they did?

A. My deputy reported that they did.

Q. Miss A. G. Chipley was your deputy?

A. Yes sir.

Q. Under these representations you made the entries in Vol. G.?

A. Yes sir.

* * * N. G.——

Q. You personally stamped and wrote the minutes that appears in Volumes F. & G. from March 1, 1906, to December 17, 1906?

A. Yes sir.

Q. Your deputy did not prepare any part of these minutes in that part of Vols. F. & G.

A. No sir.

Q. And you prepared them on your return to the City at your convenience?

A. Yes sir.

——*

Q. What time were you in North Carolina on your vacation this year?

A. From the third of August until the 27th of September.

Mr. Reese: I object to any testimony about his absence this year.

Court: *There* is that relevant?

Flournoy: We introduce the whole minutes to show they were prepared months afterwards. I can introduce authorities to show that they are not minutes unless entered immediately and promptly.

Reese: We object to the question with reference to the Clerk's absence in North Carolina during the year 1909.

Q. You entered the minutes after you returned this year from North Carolina?

A. Yes sir, a portion of them.

Q. You entered all that were entered in these volumes F. & G.

A. Yes sir.

Reese: I object to the question it is subsequent to the time that relates to the inquiry now before the court.

Miss A. G. **Chipley**, Deputy Clerk, recalled for petitioners, testifies as follows:

Flournoy:

Q. During the year 1906 from March to December did
48 you and the deputy Marshal at any time actually go into
the Court room and go through the formal opening and adjourning of Court?

A. No sir, I only stamped and wrote the minutes of the District Court in my own office, when it would be convenient. I had nothing to do with the minutes of the Circuit Court. Mr. Marsh prepared them.

Q. Did you and the deputy Marshal in the absence of the Clerk or at any time either in the court room or in your office ever formally open and adjourn court?

A. No sir never did. I merely stamped and wrote the minutes of the District Court.

Q. Did you ever report to the Clerk that you did do so?

A. No sir, never did.

Q. Were the minutes in book- F. & G. those of the Circuit Court?

A. I have nothing to do with the Circuit Court minutes.

Q. Were these prepared Daily or how often?

A. They were not prepared daily. They were prepared two or three times a month and sometimes as long as two month- afterwards.

Reese: I move to strike out the questions and answers as to when they were prepared. The record is the best evidence.

Court: I have ruled on that already.

Q. When is the stamp used, and when do you write the minutes.

A. The writing is only to fill in the date line and to copy such orders as may be made.

Q. You had two volumes of Minutes, separate volumes? One *fore* for the Circuit and one for the District Court?

A. Yes sir.

Q. And you kept the volume for the District Court? That is prepared the minutes?

A. Yes sir.

Q. And there were three rubber stamps?

A. Yes sir.

Q. One part of the stamp to certify to the opening and the other to certify to the adjourning?

A. Yes sir.

Q. Part two was the same for both stamps?

A. Yes sir.

Statement made by Judge Wm. B. Sheppard November 4th,

A. D. 1909. Which is agreed to be considered as though it had been made before the decision of Judge Thos. G. Jones on yesterday.

Hon. William B. Sheppard, now Judge of the Circuit and District Courts in and for the Northern District of Florida, at this time, and who was United States District Attorney for the Northern District of Florida at the time *and* indictment and trial of these
49 cases, and with reference to indictment 597, against W. S. Harlan C. C. Hilton and S. E. Huggins made*s* the following statement to wit:

"I recollect distinctly preparing a new indictment which was a copy of the indictment found on the 12th, embracing some additional matter which had been suggested by Assistant Attorney General Russell. The indictment was returned to the Grand July by m*u*self with an explanation of the changes made. After that I read the indictment to *the* them. I explained to the grand jury that it required their action and consent and to the best of my recollection I retired from the grand jury room as was my invariable practice to allow them to deliberate and vote on the matter without the presence of the District Attorney. I have no recollection of being present at any vote or discussion by the grand jury on the subject of the new indictment.

I don't remember whether I read the changes or the whole indictment to the grand jury.

I don't remember presenting any testimony on the new indictment.

The indictment found on the twelfth against Harlan, Huggins, Hilton and Howell was numbered 592 and that one on the fourteenth against them was numbered 597.

The changes that were made and incorporated in Indictment # 597 were those suggested and dictated by the Assistant Attorney General Chas. W. Russell."

W. B. SHEPPARD.

And upon application of petitioners they are allowed twenty days from and after the 4th day of November, 1909, within which to prepare and present bill of exceptions, which was agreed to by the Government.

(Here insert opinion of Judge Jones.)

And in as much, as the several matters objected to and insisted upon and considered by the Court do not appear by the record the said petitioners did on the 23d day of November, 1909, by virtue of special order made propose this their bill of exceptions to the rulings of the said Judge in said cause and requested him to sign the same. And which upon due notice to the Counsel for the Government is done. This the 23rd day of November, A. D. 1909.

I hereby certify that the above and foregoing bill of exceptions contains all of the evidence introduced at the trial in the above stated case, and that in my opinion it is necessary that the testimony or evidence be stated in the form of questions and answers in order to enable the appeallate court to fully understand and weigh the matters and issues presented.

(Sgd.) THOS. G. JONES,
Judge of the Northern and Middle Districts of Alabama, Presiding in the Trial, Pursuant to a Designation to Sit and Hold Court in the Northern District of Florida.

50 *The Court's Decision.*

The decision of Judge Jones is as follows:

"This is an important case, and has been argued with zeal and ability on both sides, and I have thought it proper, therefore, to outline the reasons which control the judgment of the court in the petition for writ of habeas corpus.

"The petitions for the issue of writs in these cases were framed to bring them within the doctrines of the Supreme Court of the United States. In Hans Nielson, petitioner, 131 U. S. 1852 and ex parte Bain, 121 U. S. 186, where the Supreme Court discharged prisoners under sentence of a court which had jurisdiction of person and subject matter, because in the progress of the causes there has been, as here claimed, a violation of some fundamental constitutional right of the prisoners. The petition here alleges that the circuit court of the United States for the northern district of Florida had no jurisdiction to try and sentence the prisoners, it being alleged among other things, that there was no legal term of the court, at which the convictions were had; that the indictment on which the trial and convictions were had, were not in fact found by a grand jury, that no evidence was offered before the grand jury in support of the indictments, that the sentence and convictions were illegal, because the petitioners were sentenced to imprisonment at hard labor in the penitentiary, whereas the statute only authorizes imprisonment in the penitentiary; that since the convictions and sentences the president had commuted the sentence to six months' imprisonment, and imprisonment for such a time it is urged could not legally be executed in the penitentiary.

"The petitioners further aver that the petitioners had been tried in the circuit court of the United States for the northern district of Florida, for an offense which in truth and fact, was committed in the middle district of Alabama and that the conviction in this district in this respect, are in violation of the constitution of the United States.

Questions Not Raised.

"None of these questions, except the last, was raised before the circuit court of appeals, when the convictions and sentences in these cases were affirmed. As the questions raised by the petitions involved grave constitutional rights of the citizens, the court felt compelled to issue the writ, that the petitioners might have opportunity to have these matters inquired into.

"The indictment in these cases charged that the offense was committed in the northern district of Florida. The verdict of the jury affirms that the charge is true. Habeas corpus is not a revisory or appellate writ in any respect. The record disproves that objection. This court cannot go into that matter without usurping the authority, and in effect, reversing the judgment of another and higher tribunal. The court has, therefore, declined to look into the bill of exceptions on the trial in this case, which is a part of the record only for appellate purposes, and to consider whether the evidence before the circuit court for the northern district of Florida justified the finding that the offense was committed in the northern district of Florida. The other questions raised are not concluded by the decisions of the circuit court of appeals, and relate to matters, which if proved, render the sentences, in the case not merely voidable, but absolutely void. It is unnecessary to cite authorities to show if there was no legal term of the court, at which the convictions were had, that such convictions were nullities, nor that if the indictments were not in fact returned by the grand jury, that all proceedings based on it would be a nullity, under the decisions in ex parte 'Bain, 121 U. S. 186', and 'Hans Nielson, petitioner, 131 U. S. 185.'

The Evidence Heard.

The court therefore heard evidence in a summary way upon these matters, allowing both sides to offer such portion of the record and other evidence bearing upon the issues as they saw proper, subject to the right to move to rule out or object to the evidence for illegality or otherwise.

"The court is of the opinion that the record shows that there was no infirmity in the life of the court at which these convictions were had. It is of the opinion, going further than the counsel for the government argues, that after the term was opened on the first day of March, it remained open, although nothing was done at all, unless the judge of that court stopped the term by adjournment for the term. It is not necessary to go into this, as what the court holds to be the record, and very properly so, shows that the court was opened from day to day, and never adjourned finally until the presiding judge came here and opened that term of court. I quite concur with the counsel and the decision of the supreme court of Florida, that if in fact an indictment had been palmed off on the court that had never been found, that even after conviction, and trial, it would be in the power of the court to inquire into it, and in such case a writ would issue, discharging the prisoners.

Indictments Returned.

"The facts in this case show that two of the indictments were found by the grand jury, on testimony of witnesses summoned before them, and the third was found on the same testimony. That it might have been found on the same evidence, and no formal vote taken on the third indictment, the court thinks would be only a matter of irregularity which could not be taken advantage of, except by motion to quash the indictment, before parties entered plea of not guilty. So far as regards the contention that what is called the amended indictment the court thinks that the proof shows that it was, and don't think it necessary to have a formal vote to evidence the concurrence of the jury in a finding. They might say: 'Well, that's all right, but that aside, the jury comes down to the court here, and presents this finding in open court, and the parties plead to it, and that affirms the genuineness of it, and that it was properly found. That disposes of the main matters argued before the court.

"There has already been a motion of the government that that part of the sentence which imposes hard labor be expunged from the sentence, and the sentences corrected, and I have no doubt of the right of the court in this respect, as the 'hard labor' was illegal, and as I do not see how this action of the court can injure the defendants, or how they can object to it.

Commutation of Sentence.

"Another matter, the commutation of the sentence. There is no evidence that sentences have ever been commuted. It is true that there has been a letter presented to the court from the secretary of the president to a high officer of this state, but there would have to be a formal warrant, of pardon or commutation, before the court could act upon it.

"As to Judge Shelby's order, I cannot agree with counsel on this point. As he is a circuit judge, and has power anywhere in the Fifth judicial circuit, to order grand juries, I do not think that his order for the organization of a grand jury in this case was illegal, and even if there was irregularity in that respect, it was waived by the defendant pleading not guilty. There will be an order made in each of these cases, remanding the defendants to the custody of the marshal, and discharging the writ.

"Counsel for petitioners, while earnestly contending that a case has been made which requires the discharge of petitioners, have also advised the court that if an order is made remanding petitioners, they will apply to enlarge them on bail, pending an appeal to the supreme court of the United States from this court's decision.

"The supreme court rules on a subject after a writ has been issued and then discharged, leave the matter of bail under such circumstances largely to the sound discretion of the court, before whom the matter is pending. Courts ought not to give countenance to resistance to the execution of a sentence, by lightly admitting the prisoner to bail, pending refusal to discharge him on habeas corpus.

Should be Executed.

"It is in the interest of peace and good order, and the prompt execution of the law, that a sentence, especially after it has been affirmed by an appellate court, should be executed without undue delay, but still there are instances where a prisoner may properly ask to be enlarged on bail, under such circumstances, and one of them is where grave constitutional questions are involved, affecting the liberty of the citizen in matters upon which the appellate court, which has affirmed the sentence, has not passed, or had opportunity to pass upon, and which have only lately come to the knowledge of petitioner, and go to the destruction of the sentence, even on collateral attack by habeas corpus. The general rule is stated in 3 A. & E. Ency. Law, Page 675, as follows:

" 'In the United States, after conviction, no constitutional right to bail exists, and the granting of bail rests in the sound discretion of the court. In cases of misdemeanor, this discretion is exercised freely in its favor, but in felonies bail is allowed with great caution and only where the peculiar circumstances of the case render it right and proper.'

" 'In Rose ex rel. Carter vs. Roberts, 99 Federal 952,' the circuit court of appeals for the Second judicial district, passed upon a question affecting little in princip*al* from that raised by the application for bail in these cases. The court says: 'It is the right and privilege of a person deprived of liberty to review to the extent permitted by law the legality of his contention, even when it is pursuant to the judgment or sentence of a court, and the execution of the sentence should be stayed pending the final determination, unless very exceptional circumstances justify the court in refusing to do so.'

Grievous Wrong Might Result.

"If this court should refuse to enlarge the defendants upon bail pending an appeal from a decision remanding them to the custody of the marshal, the execution of the sentence complained of would commence at once. If this court be in error, then its decision upon the grave constitutional questions raised by the petitioners, and its refusal to allow the petitioners bail, would result in grievous wrong to them. On the other hand, if the supreme court of the United States should uphold the judgment of this court, the only effect of admitting the parties to bail in the meantime would be a little delay in the execution of the sentence. The government cannot be harmed, in any event, and it should turn out that this court is in error and grave harm may be done the petitioners on the other hand, if bail is denied them. It seems more in consonance with the spirit of our institution, and the sedulous care with which the constitution guards the rights of citizens, to give opportunity to allow the questions raised on this writ to be tested in the supreme court before compelling execution of the sentence complained of, by denying bail. It is not of as great importance in the administration of law that these petitioners begin to serve the sentence at any particular time, as that the constitutional rights of a citizen should not be invaded by what may turn out to be an illegal conviction on which fundamental rights of petitioners have been denied.

"The petitioners will therefore be admitted bail, pending an appeal to the supreme court, and counsel may agree as to the amount and stipulations of the bail bond."

51 At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the first day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

THE GEORGIA SOUTHERN AND FLORIDA R. R. Co.
vs.
JEFFERSON B. BROWNE et als., as Railroad Commissioners of the State of Florida.

This cause coming on to be heard upon the demurrer of the defendants to the bill, and upon the stipulation filed by counsel in the cause, that the same be submitted without argument, and the said demurrer having been considered by the Court.

It is now ordered, adjudged and decreed that the said demurrer be and the same is hereby overruled, and the defendants are given until the Rule Day in April next to plead or demur, as they may be advised.

Done and ordered in open Court, the first day of March, A. D. 1906.

CHAS. SWAYNE, *Judge.*

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the second day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

THE UNITED STATES OF AMERICA
vs.
THE J. J. MCCASKILL CO.

Order Appointing Examiner.

Upon reading and considering the foregoing motion for the

Minute Book "F," page 371, Circuit Ct. Minutes.

52 appointment of a special examiner herein, and it appearing to the Court that the said cause is at issue, it is ordered, adjudged and decreed that F. W. Marsh, Esq., on account of his experience in such matters be, and he is hereby appointed a special examiner in said cause, and shall take the testimony in behalf of both complainant and defendant at such time as may be convenient to the parties. Said testimony shall be given orally by the witnesses, and be taken down by a stenographer, and thereafter be reduced

to typewriting, and when subscribed by the witnesses and duly certified, the same to be admitted in evidence.

Done and ordered at Chambers at Pensacola, this 2nd day of March, A. D. 1906.

CHAS. SWAYNE, *Judge.*

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the third day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

THE JACKSON LUMBER COMPANY
vs.
CHARLES F. TURNER, as Tax Collector.

This cause coming on to be heard on the demurrer of the defendant to the bill of complaint filed herein, and the same ha*b*ing been argued by counsel, and considered by the Court.

It is now ordered and adjudged that the said demurrer be, and the same is hereby sustained, and the Complainant is given until the Rule Day in April next to file an amended Bill, if it may be so advised.

Done and ordered at Pensacola, this 3rd day of March, A. D. 1909.

CHAS. SWAYNE, *Judge.*

Minute Book "F," page 372.

53 It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the fifth day of March, A. D. 1906—present the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

FREDERICK W. HAWARD
vs.
THE POWELL MCLEAN Co. et al.

Bill to Cancel Tax Deed.

This cause came on again to be heard upon the bill, answer, replication and testimony, and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed, that the title to the following lands, situated in Taylor County, Florida, to-wit:—All of section thirty-five (35), except the northwest quarter of the northwest quarter: and the west half of the west half and the southeast quarter of the southwest quarter of section thirty- six, in Township Two (2), South of Range Six (6) East, be and the same is hereby decreed to be in the Complainant, Frederick W. Haward.

It is further ordered, adjudged and decreed that the assessment for taxes of said lands for the year 1894 be and the same is hereby declared to be null and void and of no effect whatever: also the advertisement and sale of said lands on November the 4th, 1895, for the taxes due for 1894, are declared to be null and void, and the deed issued to Henry West & Co., by John C. Calhoun, Clerk of the Circuit Court of Taylor County, Florida, dated Oct. the 17, A. D. 1902, and the deed executed by Henry West & Co. to John C. West & Sons, dated the 13th day of January, 1903, and the deed executed to Powell-McLean Co., dated the 28 day of Jan., 1905, and any and all other deeds or transfers based upon the said assessment of said lands for taxes for the year 1894, and the sale of November 4th, 1895, and any and all subsequent deeds or transfers attempting to convey said lands or any part thereof, be and the same are hereby cancelled and declared to be null and void, and they and each and every of them are hereby ordered to be surrendered for cancellation.

It is further ordered, adjudged and decreed that John W. Mc-

Minute Book "F," pages 372-373.

54 Lean, Jacob McLean, John C. West, James W. West and Samuel R. West, composing the firm of McLean, West & Co., John W. McLean and Jacob Young, composing the firm of Jno. W. McLean & Co., John W. McLean, J. H. Powell and J. E. Powell, composing the firm of Powell & McLean, and the Powell-McLean Co., individually and as a firm, and any and all other persons claiming or pretending to claim said lands or any part thereof, either as purchasers at said tax sale or subsequent purchasers, their agents, servants and employees, be and the same are perpetually enjoined from taking any crude turpentine or timber from said lands, and from exercising any management or control over said lands, either as owner-, lessees or renters of said lands, and from in any manner interfering with the said Frederick W. Haward in the possession, management, occupation, use and enjoyment of the same.

It is further ordered, adjudged and decreed that the defendant, The Powell McLean Co., pay the costs of this proceeding, including the Commissioner's costs amounting to —.

Done and ordered in open Court, in Pensacola, Florida, this the 5th day of March, 1906.

CHAS. SWAYNE, *Judge.*

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola, ,on the sixth day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to-wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the seventh day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "F" pages 373-374.

55 At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the eight day of March, A. D. 1906—present, the Honorable Charles Swayne, Judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the ninth day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the tenth day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

Minute Book "F," page 374.

56 T. D. Quigles et al.
vs.
M. Lindsay et al.

Order to Amend Bill.

Pursuant to leave heretofore granted, it is ordered that the bill of complaint in this cause be amended by joining as defendants therein the Lindsay Lumber Company, a corporation created by the laws of Alabama, with apt words to charge it is a defendant in said cause. And it is further ordered that the said defendant, Lindsay Lumber Company, file its answer, demurrer or plea thereto on *on* the rule day of May, 1906, provided Complainants have filed amendments ten days previous thereto, and on failure to do so, said bill may be taken pro confesso as against it.

Done and ordered this the 10th day of March, A. D. 1906,

CHAS. SWAYNE, *Judge.*

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twelfth day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

In Chancery.

T. D. QUIGLES et al.
vs.
LINDSAY LUMBER COMPANY et al.

This cause coming on to be heard upon the motion of the Lindsay Lumber Company, to be made a party defendant, and to dissolve the injunction against Martin Lindsay and the other defendants heretofore issued by the Court, and the Complainant- having amended their bill by making the said Lindsay Lumber Company a party defendant, and the Court having considered the said application of the Lindsay Lumber Company.

Minute Book "F," page 375.

57 It is ordered, adjudged and decreed that the injunction heretofore granted shall be and stand dissolved upon the execution and filing in this Court by the Lindsay Lumber Company of a bond, with two or more good and sufficient sureties, approved by the Clerk of this Court, in the sum of Twenty-five Thousand ($25,000.00) Dollars, conditioned that the said Lindsay Lumber Company shall, in the case of ejectment suit mentioned in the said bill against it, and the said Martin Lindsay, and the said other defendants, be determined adversely to it, and the said defendants, pay to the obligees the stumpage value of all trees cut by it between this time and the final determination of said ejectment suit, such value to be determined by arbitration between the parties or by other method adopted by them, or in case of a failure to adopt arbitration or other methods, by an adjudication of a competent Court.

Done and ordered this 12th day of March A. D. 1906.

CHAS. SWAYNE, *Judge.*

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the thirteenth day of March, A. D. 1906—

present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the fourteenth day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "F," page 376.

58 At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the fifteenth day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the sixteenth day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

In Equity.

INTERNATIONAL LAND COMPANY, Complainant,
vs.
W. H. GUNN, LEONARD CARTER, LOUISELLE LOXLEY LOGGING COMPANY.

The above named complainant having moved said Court for an order to strike out the plea to the jurisdiction of this Court, interposed by the defendant Louiselle Loxley Logging Company, heretofore filed herein, and said motion having duly come on to be heard before this Court on this the 12th day of March, A. D. 1906, and after hearing George Sylvester in support of said motion and W. B. Sheppard Esq. in opposition thereto, the said Court being well and sufficiently advised, it is ordered that the plea of the defendant, Louiselle Loxley Logging Company to the jurisdiction of this Court, filed herein on the second day of February, 1903, and the same is

Minute Book "F," pages 376-377.

59 hereby stricken out and held for naught.

Ordered further that leave be and is hereby granted to the defendant Louisell Loxley Logging Company, to answer or demur to the bill of complaint herein filed within 20 days from date hereof. Dated this 12th day of March, 1906, By the Court.

CHAS. SWAYNE, *Judge.*

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the seventeenth day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the nineteenth day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twentieth day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

Minute Book "F," page 377.

60 INTERNATIONAL LAND COMPANY, Complainant,

vs.

W. H. GUNN, LEONARD CARTER, and LOUISELL LOXLEY LOGGING COMPANY, Defendants.

This cause came on to be heard upon motion of complainant's counsel before the Hon. Charles Swayne, Judge, to amend Complainant's bill by adding the names of A. B. Adams, Richard D. Fryer, W. H. Louisell and A. D. Covington, as defendants herein, with apt words to charge them.

The Court having considered the matter, and being of the opinion that the Complainant has the right to amend its bill as set out above, by adding thereto the names of A. B. Adams, Richard B. Fryer, W. H. Louisell and A. D. Covington, as defendants, with apt words to charge them.

It is therefore ordered and decreed that the complainant be permitted to amend its bill as set out above.

Dated this the 20th day of March, A. D. 1906. By the Court.

CHAS. SWAYNE, *Judge.*

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-first day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "F," page 378.

61 At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty second day of March, A. D. 1906, present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to-wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-third day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to-wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty fourth day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceeding had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty sixth day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "F," 378.

62 At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-seventh day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-eighth day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-ninth day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the thirtieth day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "F," page 379.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the thirty-first day of March, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the second day of April, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the third day of April, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the fourth day of April, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

Minute Book "F," page 380.

64 **FREDERICK V. HOWARD**
vs.
POWELL, McLEAN COMPANY et al.

The attached memirandum of items of costs, together with notice of taxation thereof attached, and registry receipt, having been duly considered, and the defendants offering no objection thereto:

It is now ordered and adjudged that the said bill of costs, amounting to the sum of One Hundred and ten and 85/100 ($110.85) Dollars be and the same is hereby taxed as costs, to form a part of the decree of the Court, entered on the fifth day of March, 1906, and judgment be and is hereby entered against the said defendants, and each of them, for the said sum, and that the complainants do have execution therefor.

Done and ordered this 4th day of April, A. D. 1906.

CHAS. SWAYNE, *Judge.*

THE JACKSON LUMBER COMPANY, a Corporation, Complainant,
vs.
CHARLES F. TURNER, Tax Collector, Defendant.

This cause coming on to be heard upon the application for an injunction, and it appearing that due notice has been given of said application by said complainant, and the Court being advised of its opinion.

It is here ordered, adjudged and decreed that the said Charles F. Turner, Tax Collector in and for the County of Walton, State of Florida, his agents and successors, and each of them, be, and they are hereby enjoined to refrain and desist absolutely from advertising, and from selling said lands of said complainant as are particularly described in and by Exhibits "A" and "B" attached to the bill of complaint this day filed in said cause, until the further order of this Court.

And it is further ordered that subpœna duly issue herein, directed to the said Charles F. Turner, Tax Collector, to answer the premises, and to show cause, if any there be, why the relief prayed for in said bill of complaint should not be granted.

Dond and ordered, in the City of Pensacola, this 4th day of April, A. D. 1906.

CHAS. SWAYNE, *Judge.*

Minute Book "F", page 381.

65 It appearing to the Court that the Jury Box does not contain as many as three hundred names.

It is therefore ordered that the Clerk and Jury Commissioner do, at such time as may be convenient, withdraw from the Jury Box all names placed therein, and that the same be filled in accordance with law, by the placing therein of not less than four hundred and fifty names, in compliance with law, and the rules of this Court.

Done and ordered this 4th day of April, A. D. 1906.

CHAS. SWAYNE, *Judge.*

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the fifth day of April A. D. 1906. Present, the Honorable Charles Swayne, Judge. Among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the sixth day of April A. D. 1906. Present, the Honorable Charles Swayne, Judge. Among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the seventh day of April A. D. 1906. Present, the Honorable Charles Swayne, Judge. Among the proceedings had were the following, to wit:

Minute Book "F", page 382.

66 It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the ninth day of April A. D. 1906. Present, the Honorable Charles Swayne, Judge. Among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the tenth day of April A. D. 1906. Present, the Honorable Charles Swayne, Judge. Among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the eleventh day of April A. D. 1906. Present, the Honorable Charles Swayne, Judge. Among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twelfth day of April A. D. 1906. Present, the Honorable Charles Swayne, Judge. Among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "F", page 382.

67 At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the thirteenth day of April A. D. 1906. Present, the Honorable Charles Swayne, Judge. Among the proceedings had were the following, to wit:

Order:

Upon the application of the United States District Attorney for the Northern District of Florida, it is ordered that the Jury Commissioner and the Clerk do draw, at their earliest convenience, the names of 27 persons from the Jury Box at Pensacola, which names had been theretofore placed therein in compliance with law, and that thereupon the Clerk shall issue a venire, directed to the Marshal of the District, requiring the attendance of said persons whose names have been so drawn, together with a certified copy of this order attached, commanding the attendance of said persons as Grand Jurors, in and for the body of the Northern District of Florida, in said Court, at Pensacola, on the 1st day of May, A. D. 1906, at 10 o'clock A. M., and that the Marshal do further execute said venire by making diligent and proper service thereof.

Ordered and done this 13th day of April, A. D. 1906.

CHAS. SWAYNE, *Judge.*

Order:

Upon application to the United States District Attorney for the Northern District of Florida, it is ordered that the Jury Commissioner and the Clerk do draw at their earliest convenience, the names of 36 persons from the jury box at Pensacola, which names had been theretofore placed therein in compliance with law, and that thereupon the Clerk shall issue a venire, directed to the Marshal of the District, requiring the attendance of said persons whose names have been so drawn, together with a certified copy of this order attached, commanding the attendance of said persons *at* Petit Jurors, in and

Minute Book "F", page 383.

68 for the body of the Northern District of Florida, in said Court, at Pensacola, on the first day of May, A. D. 1906, at 10 o'clock A. M., and that the Marshal do further execute said venire by making diligent and proper service thereof. Ordered and done this 13th day of April, A. D. 1906.

CHAS. SWAYNE, *Judge.*

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the fourteenth day of April, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the sixteenth day of April, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

In compliance with notice first given, by the Clerk to the Jury Commissioner, and in obedience to the order above entered, R. M. Bushnell, Jury Commissioner and F. W. Marsh, Clerk of this Court, at the hour of 12:30 P. M., drew in compliance with law, from the jury box of this Court, which contained at the time of the commencement of said drawing, the names of five hundred and ninety-nine (599) qualified jurors, placed therein in compliance with law.

The following names as Grand Jurors:

1. W. S. Baker, Escambia.
2. Samuel J. Gonzalez, Escambia.
3. George Brown, Escambia.
4. Wm. F. Creary, Escambia.
5. Wm. J. Cosgrove, Escambia.
6. John J. Borrss, Escambia.
7. James C. Clark, Escambia.
8. F. C. Quina, Escambia.

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69

9. W. L. Gilmore, Escambia.
10. Leonard W. Morgan, Escambia.
11. E. W. Menefee, Escambia.
12. Lewis Willis, Escambia.
13. Joseph H. James, Escambia.
14. Frank Carroll, Escambia.
15. Louis J. Anderson, Escambia.
16. Joseph R. Keller, Escambia.
17. R. F. Mitchell, Escambia.
18. T. E. Conlin, Escambia.
19. B. F. Gainer, Washington.
20. Wm. L. Moyer, Escambia.
21. Hardy S. Green, Jackson.
22. B. M. Bonifay, Escambia.
23. John J. Grant, Holmes.
24. C. P. Grant, Jackson.
25. Daniel Gillis, Holmes.
26. John E. Ross, Escambia.
27. H. C. Clopton, Escambia.

And the following names as Petit Jurors:

1. J. H. Ferguson, Jackson.
2. John C. Byxbee, Escambia.
3. J. D. Ferrell, Jackson.
4. Harry H. Jennett, Escambia.
5. H. M. Fulghum, Jackson.
6. W. O. H. Sheppard, Escambia.
7. Arthur J. Johnson, Escambia.
8. Berry A. Davis, Escambia.
9. A. A. Brooks, Escambia.
10. Geo. W. C. Clutter, Escambia.
11. R. W. Brooks, Escambia.
12. Benj. H. Fairchild, Escambia.
13. John F. King, Walton.
14. Robt. S. Denham, Escambia.
15. Manuel G. Runyan, Escambia.
16. Chas. H. Turner, Escambia.
17. H. H. Fagan, Jackson.
18. H. J. Blumer, Escambia.
19. Bradley Hobbs, Escambia.
20. Joseph M. Crona, Escambia.
21. A. Gideon Fell, Escambia.
22. T. W. Saltmarsh, Escambia.
23. Ellis W. Frater, Escambia.
24. E. G. Creighton, Escambia.
25. Clare Davis, Walton.
26. John Clark, Escambia.
27. C. Hawks Dorr, Escambia.
28. Mark Hurd, Escambia.
29. Harry J. Howland, Escambia.
30. Dan'l Farrior, Washington.
31. Jas. K. Rozier, Escambia.
32. John H. Christie, Escambia.
33. J. R. Fillingim, Escambia.
34. Frederick Gilmore, Escambia.
35. Eugene Delmar, Escambia.
36. Albert H. Runyan, Escambia.

and thereupon a venire was duly issued for the summoning of the said jurors, in compliance with the above order, and delivered to the Marshal for service.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "F," page 385.

70 At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the seventeenth day of April, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the eighteenth day of April, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the nineteenth day of April, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twentieth day of April, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "F," page 385.

71 At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-first day of April, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-third day of April, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-fourth day of April, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City

of Pensacola on the twenty-fifth day of April, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book —, page 386.

72 At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-sixth day of April, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-seventh day of April, A. D. 19— present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-eighth day of April A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the thirtieth day of April, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "F," page 387.

73 At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the first day of May, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

The names of those drawn and summoned as Grand Jurors were called, and the following persons answered to their names. 1. W. S. Barker. 2. George Brown, 3. Samuel J. Gonzales, 4. William F. Creary, 5. John J. Bours, 6. James C. Clark, 7. F. C. Quina, 8.

W. L. Gilmore, 9, E. W. Menefee, 10, Lewis Willis, 11. Joseph H. James, 12. Louis J. Anderson, 13. Joseph R. Keller, 14. R. F. Mitchell, 15. T. E. Conlin, 16, W. L. Moyer, 17. Hardy S. Green, 18. B. M. Bonifay, 19. John J. Grant, 20. G. P. Grant, 21. H. C. Clopton, 22, B. F. Gainer, 23, Daniel Gillis, who were each examined on their voir dire, and the following orders made.

Ordered that B. F. Gainer be excused from further attendance as a Grand Juror.

Ordered that Daniel Gillis be excused from further attendance as a Grand Juror.

Ordered that Frank Carrol be excused from further attendance as a Grand Juror.

The Marshal returned the following names as not found, Wm. J. Cosgrove, Leonard W. Morgan, John E. Ross, the balance as duly served.

The first named 21 persons above entered as answering to their
74 names were found qualified and accepted by the Court as Grand Jurors for said District in said Court, whereupon the Court appointed William F. Creary as foreman, to whom was administered the oath required by law, as was also administered to each of the other Grand Jurors so found qualified, and the Court having instructed the Grand Jury, they retired to deliberate.

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The names of those drawn and summoned as Petit Jurors were called, and the following persons answered, to-wit:—1. J. H. Ferguson, 2. J. D. Ferrell, 3. Harry H. Jennett, 4. H. M. Fulghum, 5. Benjamin A. Davis, 6. A. A. Brooks, 7. Benjamin H. Fairchild, 8. Robert S. Denham, 9. Charles H. Turner, 10. H. H. Fagan, 11. Joseph M. Crona, 12. A. Gideon Fell, 13. Ellis M. Frater, 14. E. G. Creighton, 15. Davis Clary, 16. John Clarke, 17. C. Hawks Dorr. 18. Mark Hurd, 19. Harry T. Howland, 20. James K. Rozier, 21. John H. Christie, 22. Frederick Gilmore, 23. Eugene Delmar, 24, Albert H. Runyan, 25. H. J. Blumer.

The Marshal returned as not found the following names, John C. Byxby, R. W. Brooks, Bradley Hobbs, W. O. H. Sheppard, Manuel G. Runyan, Daniel Farrior, G. W. C. Clutter, the balance of jurors duly served.

Ordered that J. F. King be excused from further attendance as petit juror.

Oredered that T. W. Saltmarsh be excused from further attendance as a petit juror.

Ordered that A. J. Johnson be excused from further attendance as a petit juror.

Ordered that J. R. Fillingim be excused from further attendance as a petit juror.

Ordered that Davis Clary be excused from further attendance as a petit juror.

Ordered that Eugene Delmar be excused from further attendance as a petit juror.

Ordered that Ellis Frater be excused from further attendance as a petit juror.

Ordered that Albert H. Runyan be excused from further attendance as a petit juror.

Ordered that Charles H. Turner be excused from further attendance as a petit juror.

Ordered that A. Gideon Fell be excused from further attendance as a petit juror.

Ordered that the Marshal summons from the by-standers twelve qualified jurors to be and appear before this Court at 10 o'clock A. M. to-morrow, to act as petit jurors at and for this term of Court.

Minute Book "F," page 388.

75 I, Sam Pasco, Jr., do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic: that I will bear true faith and allegiance to the same: that I take this obligation freely without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of Assistant United States Attorney for the Northern District of Florida on which I am about to enter. So help me God.

SAM PASCO, Jr.

Sworn and subscribed before me this first day of May, A. D. 1906.

PATTILI IO CAMPBELL,
Notary Public.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the second day of May, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

The Marshal returned the special venire for petit jurors, and the following persons were called and answered, sworn on their voir dire, and found qualified and accepted as petit jurors, to-wit:—1. C. J. Bell, 2. George Mayne, 3. John O'Donnavan, 4. Richard Gagnet, 5. Harry H. Hallmark, 6. W. C. Morris, 7. A. McD. Moyer, 8. C. C. Brock, 9, Thomas Tuttle, 10. E. E. De Vaughn, 11. J. W. Searles, 12. Frank Maura.

It is ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "F," page 389.

76 At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the third day of May, A. D. 1906—

present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the fourth day of May, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

In the United States Circuit and District Courts for the Northern District of Florida, March Adjourned Term, 1907.

PENSACOLA, FLA., *May* 4, 1906.

To the Honorable Chas. B. Swayne, Judge of said Courts.

SIR: We the Grand Jury, empaneled, charged and, sworn to enquire in and for the body of the said Northern District of Florida, beg to report that we have examined sixteen cases, of which true bill- were returned in eleven, and no true bills in five.

In this, our final presentment, we desire to return our thanks for the able and eloquent charge made to this jury, by which we have been able to expedite the several matters submitted to our consideration. Also to the District Attorney and his Assistant, Mr. Pasco, for timely advice.

Having finished our labors, we respectfully request to be excused from further attendance on this Court.

Respectfully submitted.

W. F. CREARY, *Foreman.*

J. R. KELLER, *Clerk.*

Minute Book "F," page 390.

77 The Grand Jury came into Court and presented the foregoing presentment. Whereupon the Court ordered that the Grand Jury be discharged from further attendance.

Ordered that Benjamin A. Davis be excused from further attendance as petit juror.

Oreder- that John Clark be excused until Monday next, from jury duty.

Ordered that Court adjourn until to-morrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the fifth day of May, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

Ordered that Richard Gagnet be excused as a juror until Monday next.

Ordered that Harry H. Hallmark be excused as a juror until Monday next.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the seventh day of May, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

Ordered that H. M. Fulghum be excused as a juror from further attendance.

Ordered that J. D. Ferrell be excused from further attendance as a juror.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "F," pages 390-391.

78 At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the eighth day of May, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

Ordered that John H. Christie be discharged from further jury duty.

Ordered that Frederick Gilmore be discharged from further jury duty.

Law. No. 100.

THE UNITED STATES
vs.
THE J. J. MCCASKILL COMPANY, a Corporation, Defendant.

Damages, $800.00.

And now at this time came the United States by its attorney, and joined issue upon the pleas of the defendant this day filed, and the cause coming on for trial upon the issues in the pleadings contained, and the parties and their attorneys being in Court, came the following jury, to-wit:—1. Joseph M. Crona, 2. Harry H. Jennett, 3. E. G. Creighton, 4. G. Hawks Dorr, 5. James K. Rozier, 6. H. J. Blumer, 7. George Mayne, 8. John O'Donavan, 9. Harry H. Hallmark, 10. C. C. Brock, 11. A. McD. Moyer, 12. J. W. Searls, who being duly chosen, tried and sworn, and after hearing a part of the evidence, the United States asked for a non-suit of said cause. Whereupon the Court ordered that the said cause be dismissed with-prejudice.

Law. No. 102.

T. D. QUIGLES et als.
vs.
MARTIN LINDSAY et al.

Ejectment.

This cause coming on to be heard on the issues in the pleadings contained, and the parties and their attorneys being in Court, came the plaintiffs and discontinued this cause as to all other defendants except Martin Lindsay. Whereupon came the following jury,

Minute Book "F," page 391.

79 to-wit:—1. J. H. Ferguson, 2. Mark Hurd, 3. Robert S. Denham, 4. John Clark, 5. Harry T. Howland, 6. H. J. Blumer, 7. George Mayne, 8. Harry H. Hallmark, 9. C. C. Brock, 10. Thomas Tuttle, 11. J. W. Searles, 12. Frank Maura, and it being the hour of adjournment, the jury were allowed to separate, after being duly chosen, tried and sworn in the cause.

Ordered that all the jurors not empanelled in this cause be discharged for the term.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the ninth day of May, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

Law. No. 102.

T. D. QUIGLES et al.
vs.
MARTIN LINDSAY.

Ejectment.

And now at this time this cause came on again to be heard upon the trial aforesaid, before the said jury, and the parties and their attorneys being in Court, and the jurors aforesaid being in the box, the cause proceeded upon the taking of the proofs, and it being again the hour of adjournment, the jury were allowed to separate after instruction by the Court.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the tenth day of May, A. D. 1906—present, the

Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

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80 Law. No. 102.

T. D. Quigles et al.
vs.
Martin Lindsay.

Ejectment.

And now at this time this cause came on again to be heard upon the trial aforesaid before the said jury, and the parties and their attorneys being in Court, and the jurors aforesaid being in the box, the cause proceeded upon the taking of the proofs, and it being again the hour of adjournment, the jury were allowed to separate after instruction by the Court.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the eleventh day of May, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

Law. No. 102.

T. D. Quigles et al.
vs.
Martin Lindsay.

Ejectment.

And now at this time this cause came on again to be heard upon the trial aforesaid before the said jury, and the parties and their attorneys being in Court, and the jurors aforesaid being in the box, the cause proceeded upon the taking of the proofs, and after the hearing of the evidence, and the argument of Counsel, the Court instructed the jury to return a verdict for the defendant. Whereupon, upon said direction, the jury agreed upon such verdict.

Whereupon, it was considered, ordered and adjudged, that the defendant, Martin Lindsay, do have and recover of and from the plaintiffs, T. D. Quigles, Anita Pons, John D. Pons, Louis Boley, R. M. Rigo, J. E. Quigles, T. Manette, J. Garget, joined by her husband John Gagnet, Eugene Boley, Michael Boley, Anetta Kruger,

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81 joined by her husband Charles Kruger, Menor Kilbee, joined by her husband William Kilbee, Douglas Pons, Claud Pons,

Herman Pons, by their next friend, T. D. Quigles, and each of them, the costs of said defendant in this behalf expended, taxed in the sum of $95.65.

And that the defendant go hence without day.

Ordered that all petit jurors be discharged for the term.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twelfth day of May, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

MONDAY, *May* 14, 1906.

Court was opened pursuant to the said order; present, the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

TUESDAY, *May* 15, 1906.

Court was opened pursuant to the said order; present, the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

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82 WEDNESDAY, *May* 16, 1906.

Court was opened pursuant to the said order; present, the Clerk and the Marshal.

The præcipe for process and summons ad. res. filed and issued in the suit of Fred W. Haward vs. Powell & MaLean.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

THURSDAY, *May* 17, 1906.

Court was opened pursuant to the said order; present, the Clerk and the Marshal.

The Declaration in the suits of John Calhoun et als. vs. Aycock Bros. Lumber Co. filed.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the eighteenth day of May, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

The following rules of Court were adopted in open Court and ordered entered upon the Minutes as follows:

83 United States Circuit Court, Northern District of Florida.

Attorneys.

I.

Any person who is an attorney, solicitor and counsellor of the Supreme Court of the United States, or any Circuit or District Court of the United States of good standing and of good moral character, will be admitted to practice as an attorney, counsellor and advocate of this Court, upon exhibiting satisfactory evidence to the presiding judge of this Court that he is entitled to admission within this rule.

II.

A standing committee is hereby constituted, to consist of five members of the bar of this Court, whose duty is shall be to frame such rules as may appear to them expedient for the proper disposal of the business of said Committee; what shall constitute a quorum thereof; the manner and time of meetings, and of forms and requisites for admissions to the bar, the method of examinations, whether written or oral, and the number of such committee necessary to concur in its report.

The rules so adopted by said Committee shall be typewritten from time to time and filled with the Clerk, and recorded on the minutes of the Court at each place of holding Court, and one copy thereof retained by the Secretary of the Committee.

Any person over the age of twenty-one years, an actual resident of the State of Florida, who may desire to be admitted to the bar of this Court, shall make application only in the manner 84 provided by the rules of said standing committee, except such applications as are made under rule one hereof.

All applications shall be filed with the Secretary of the Committee, and no application will be considered by this Court until after said Committee has fully reported in the matter, and said applicant has stood the required examination before said Committee.

The membership of said Committee for Pensacola shall consist of Chairman, John C. Avery, Secretary Scott M. Loftin, and Messrs. C. Moreno Jones, A. C. Blount, Jr. and Samuel Pasco, Jr.

And for Tallahassee, shall consist of George P. Raney, Chairman, George B. Perkins, Secretary, and Messrs. Frederick T. Myers, R. W. Williams and John W. Henderson.

(The rules and regulations adopted by these several committees are herewith pirnted and will be found on page 55.)

III.

The following shall be the form of the oath to be administered by the Clerk to persons admitted to practice in this Court, to-wit: "You do solemnly swear (or affirm) that you will support and defend the Constitution of the United States against all enemies, foreign and domestic; that you will bear true faith and allegiance to the same;

that you take this obligation freely, without mental reservation or purpose of evasion; that you will faithfully and according to the best of your ability discharge the duties of the office of attorney,
85 solicitor, counsellor and advocate of the Circuit Court of the United States for the Northern District of Florida, So Help Me God." Which oath shall be taken orally in open Court by the applicant, and a record thereof made by the Clerk in the minutes of the Court.

Upon demand, the Clerk shall issue to each person so admitted, a certificate thereof, under the seal of the Court, for which he shall be entitled to a fee of One Dollar.

Jurors and Juries.

IV.

Upon the receipt and entry of an order for the filling of the jury box, the Clerk will issue a præcipe to the Jury Commissioner, citing said order, and directing the attendance of such Jury Commissioner on a day certain, and stating the number of names which he will be required to furnish and place in the jury box, and upon such day, or upon a subsequent day, if by agreement, the time be changed, such number of names as is directed by said order shall be placed therein in accordance with law, but nothing herein shall be construed to invalidate the voluntary attendance of the Jury Commissioner, and the adjournment of the time for such filling.

A similar process shall be adopted when the Jury Commissioner is ordered by the Court to be present and assist in the drawing of any jury.

In the filling of the Jury box the Clerk and Jury Commissioner shall use slips of paper of the same color and appearance,
86 which shall have written or typewritten thereon the name of the person, with the Christian name if known, and the County from which he has been selected.

V.

The Clerk shall keep a book of record, to be open at all times for inspection, in which he shall enter the names and counties of residence of all persons whose names have been placed in the jury box pursuant to order of Court, and at the time any name is drawn out in pursuance to order of Court, a minute of the time and whether for grand or petit jury duty shall be entered opposite such name.

VI.

Grand and petit jurors summoned, and witnesses subpœnaed on the part of the United States, or in conformity with the provisions of Section 878 of the Revised Statutes of the United States, attending before this Court, will be notified to report to the Clerk and to the Marshal, and upon being discharged or excused for the term, shall forthwith attend before the Clerk and prove, on oath, their place of residence, days of attendance and number of miles traveled,

The Clerk shall keep a book of record, in which he shall enter the names of all such jurors and witnesses so reporting, the date of such report, the cause or causes in which he is subpœnaed, if a witness, and upon such witness or juror reporting after being duly discharged for the term, the Clerk shall receive on oath, proof of residence, mileage incurred, and days of attendance upon the Court by such witness or juror, a minute of which shall be duly entered upon said record book, and the Clerk shall thereupon issue to such
87 person a certificate thereof; as convenience in the payment of such witnesses and jurors may require, the Clerk shall make a report to the Court, containing the names of all such witnesses or jurors to whom fees for per diem and mileage may be thus ascertained to be due, the total amount due each person, and thereupon the Court, after due inspection of said report and in conformity with Section 855 of the Revised Statutes of the United States, will cause an order to be entered requiring the Marshal to pay the said several amounts to the said persons, unless there appears to be error therein, which will be corrected, after investigation, and thereupon the Clerk shall furnish the Marshal with a copy of such order with certificate attached.

When the account of the Marshal covering payments made to jurors and witnesses is made out for submission to the Court it shall be first submitted to the Clerk who shall compare the payments made, as evidenced by the pay rolls of the Marshal contained in his accounts, with the facts appearing on his book of record so kept, and the said order made by the Court, and if they agree, he shall make a certificate of such fact upon the account of the Marshal.

VII.

As soon as the general venire, and the special venire, if one be issued on the first day of the term, shall have been called, a list of all petit jurors accepted by the Court shall be immediately made by the Clerk, assigning to each juror a number, which shall not be changed during the term, and shall be from one upwards,
88 consecutively, according to the number of jurors accepted, and when any subsequent special venire shall have been called during the same term, those accepted shall similarly be placed on the said list, until discharged, and the Clerk shall provide a box in which shall be placed on small slips of paper of uniform color and dimensions, numbers corresponding to those assigned to each and every juror so accepted. When a case is called for trial the Marshal, a deputy or bailiff shall draw from the box in open Court twelve numbers so placed therein and at the same time calling off the numbers. The Clerk will at the same time call into the Jury box the persons whose names correspond to the numbers assigned on his list, and the place of each juror excused for cause or by challenge shall be filled in like manner until the jury be completed, the jurors shall not be called in any other manner. The numbers so drawn shall not be replaced in the jury box until the jury shall have returned a verdict or been discharged from consideration of the cause, the numbers of those so drawn and excused by challenge or

for cause, may be placed in the jury box immediately after the jury is sworn in the cause.

Witnesses.

VIII.

Subpœnas for witnesses residing within the jurisdiction of this Court shall be taken at least fourteen days previous to the first day of the term next succeeding the date of the joinder of issue in the action in which their attendance shall be required, or such action shall not be continued on account of the absence of any such
89 witness, if he were or might have been found at his residence within that period. But this rule shall not dispense with the obligation of taking the deposition of any such witness, where parties requiring his attendance, know, previous to that period, such witness intends to absent himself from the district at or during the time of the trial.

IX.

In all causes where a witness shall make affidavit showing that he attended this court as a witness at the request of either party to a suit, stating in the affidavit which party made the request, and also conforming in other respects to the practice of this Court, he shall be entitled to his fees, as if he had been regularly subpœnaed, and where such person was regularly introduced to testify in the cause, his fees shall be taxed as costs in like manner that other witnesses' fees are taxed.

X.

Where persons are subpœnaed as witnesses, but upon the trial of the cause are not introduced to testify in the cause, it will be presumed that they were unnecessarily brought to Court, and their fees will not be taxable against the opposite party, except upon the special order of the Court.

XI.

No attachment will be issued by the order of the Court against defaulting witnesses in civil causes, unless the fees for one day's attendance and for mileage going to and returning from the place of trial, shall have been tendered at the time of the service of the subpœna upon the witness, or within a reasonable time be-
90 fore the attachment is moved for, provided such witness shall have within a reasonable time before the return day of the process of subpœna, demanded the above mentioned fees from the attorney whose name is indorsed upon such process. But this rule shall not apply to cases where the fees are payable by the United States.

Court Records.

XII.

The Clerk of this Court shall keep at each of the Clerk's offices within the District the following record books and dockets:

(*a*) A "Clerk's Progress and Rules Book" in which shall be entered at the time of its commencement, every suit or proceeding of a civil nature, with a memorandum of the time and manner of its commencement, the nature of the action, the names of the attorneys or solicitors bringing the same and of the defendants if they shall appear by attorney or solicitor; and from time to time the Clerk shall enter therein a memorandum of all papers filed, the issuance and return of all process, the fees and costs as the same shall accrue or be taxed and of the credits thereon, all rules and orders, made and entered by the Clerk as of course during the progress of the cause.

(*b*) The usual motion dockets both at common law and in chancery.

(*c*) A "Writs and Return" docket in which shall be entered a memorandum of the issuance and return of all writs of a criminal nature not otherwise entered as provided in (*a*).

(*d*) A Subpœna docket in which shall be entered the date
91 of issuance of each subpœna in criminal causes and the date
when the attendance of the witness mentioned therein is required, their names and memorandum of the nature of the Marshal's return made thereto.

(*e*) A Civil Trial Docket in which shall be entered on or before the first day of any term of Court all causes at common law which have been noted for trial.

(*f*) A criminal Bench Docket in which shall be entered all causes or proceedings of a criminal nature with a convenient memorandum for the use of the trial judge at the several terms of this court.

(*g*) A registry fund book in which shall be entered the title of the case, necessary dates, amounts of deposit of funds, number and amount of check or checks drawn by the Court against said funds and other necessary data in each case in which a deposit is made for any purpose whatever, excepting cases in which final judgement has been entered and amounts paid in satisfaction thereof, (provided for in judgment docket) and deposit of fees in bankruptcy cases or other fees of officers of this court. Said record shall be considered and held as a report by the Clerk of all such moneys and funds as are in his hands or the registry of the Court made to the Court as required by law on the first day of each regular term thereof.

(*h*) The minutes of the Court, in which shall be entered all the proceedings, orders, judgments, decrees, had in open court or in
chambers, the names of the grand and petit jury and a brief
92 description of the time and manner of the drawing thereof in
compliance with any order of the Court or a judge thereof, all official oaths taken by any officer of the Court, and all bonds of such officers as are required by law to file their official bonds with the Clerk and record thereof made. A separate minute book shall be kept for recording the proceedings of a criminal nature, including the return of the presentment by the Grand Jury, the motion and order for leave to file informations, and all proceedings in open Court under said prosecutions, according to the rules and forms heretofore observed and prescribed.

(*i*) A record of naturalization proceedings wherein shall be recorded the original petition, the affidavits, and other evidence of witnesses, and the order admitting petitioners, or denying the petition, which record book shall therein conform to the Act of Congress approved March 3, 1903, entitled "An Act to Regulate the Emigration of Aliens into the United States."

(*j*) A "Witness Register" wherein shall be entered such records as is provided by rule 6 hereof.

(*k*) A "Jury Record," as provided for by rules 5 and 6 hereof.

(*l*) A "Judgment Docket" in which shall be entered a minute of all judgments rendered by this Court against any party for the payment of any money, and which judgment would, under existing laws, be a lien against any real estate in the District, which entry shall contain the names of the parties plaintiff and defendant, the character of the action, the date of the judgment, the amount
93 of the debt or damage, an itemized memorandum of the costs,
and when the same is discharged or satisfied, a memorandum shall be entered of the same in red ink across the face of the judgment, or in the usual way on the margin designated therefor, signed by the Clerk, if he be authorized in writing, otherwise by the party in whose favor the same be rendered, or by his attorney of record. In case the judgment be in favor of the United States and the money be paid in due course to the Clerk in satisfaction thereof, the said entry of satisfaction shall be by the Clerk without further authority.

(*m*) A Final Record book, in which shall be entered consecutively, a record of all proceedings of the Court and of all the pleadings of the parties, rules, orders, judgments of the court, in common law and equity causes, made and entered either in term time or rule day, such final records to conform to the usual practice in the Courts of the United States.

(*n*) A Fnal Record Book in criminal causes, which shall include the orders made by the United States Commissioners, (if hearing be had before one) binding the party over to the next term of the Court; the presentment of the Grand Jury or Order and motion for leave to file information, the bench warrant and return, if one be issued, all orders made in the cause, the plea or pleas, the empannelling of the jury and the verdict thereof and final judgment of the Court, motions for new trial and rulings thereon, motions in arrest of judgment and rulings thereon and all other interlocutory
94 orders and judgments, the final mit-imus or warrant of sentence issued by the Clerk, with the Marshal's return thereof.

Said record books shall be paged and where practicable, indexed, and the index properly kept and written up at least monthly or oftener.

The signature of the Judge upon any record book shall not be necessary to the validity thereof, but any entry thereon, made by the Clerk in pursuance of law or these rules, or by order of the Judge or Court, shall be held to be valid as though the record books were or had been signed by the Judge.

XIII.

During the temporary absence of the Judge the Court shall be deemed open daily at each of the Clerk's offices in the District, for the transaction of business on the equity side of the Court, and also for the filing of papers and the transaction of business of a general character in Court, and the Clerk shall be present, in person or by deputy, and a record of the same shall be entered upon the minutes of the Court upon each day.

Process and Notice.

XIV.

All process of this Court shall be served by the Marshal or his deputy, in the same mode and manner that a like process of the State Courts is directed by laws of the State of Florida to be served, unless a different mode of service is required by the laws of the
United States or the rules of this Court, and the name of the
95 attorney or solicitor who filed the præcipe or other paper re-
quiring the issuance of such process (if filed by an attorney or solicitor) shall in all cases be indorsed on the process by the Clerk. And the Clerk shall at the time of issuing every process make as many copies of the same as there are persons to be served, marked "copy," and one copy shall be delivered to each and every person on whom service is made by the Marshal or his deputy, and return thereof endorsed on the original writ, which shall speedily be returned into the Clerk's office.

XV.

The process of this Court shall be in the name of the President of the United States and shall bear the test of the Chief Justice of the Supreme Court of the United States, and if the office be vacant for any reason, of the Associate Justice next in precedence, and bear the date and day when issued by the Clerk, and be made returnable to the next rule day thereafter, unless there shall not be ten days intervening between the day of the issuance of the same and the next rule day, and in case of subpœna in chancery or other original process in equity causes twenty days intervening between the day of issuance of the same and the next rule day, in which case the same shall be made returnable to the rule day in the next succeeding month, unless otherwise provided by law, and shall be made returnable before the Circuit Court of the United States for the Northern District of Florida at the Clerk's office in the city or town where the Clerk's office may be located to which the same is returnable under the rules
of this Court, and in other respects the process shall be sub-
96 stantially the same as that now in use in the Circuit Courts
of the State of Florida, except so far as is otherwise specially provided for by the laws of the United States.

XVI.

For the purpose of insuring a trial for the defendant or defendants at the nearest and most convenient place of holding Court, in all cases of trial by jury, and for the purpose of determining such convenient place, it is hereby directed that common law causes in which the defendant or defendants or a majority of them shall re-

side in the County of Franklin or any part of the Northern District of Florida lying east of the Apalachicola River, the summons or other original process shall be returnable at Tallahassee, and in all such causes in which the defendant or defand'ts or a majority of them shall reside outside of the County of Franklin and west of the Apalachicola River, the summons or other original process shall be made returnable at Pensacola provided, however, that nothing herein shall prevent the issuing of any process at either of the named places returnable at the other of such places. And where there are several defendants, an equal number of which reside in both divisions of the district specified above, the trial may take place in either of said divisions, at the option of the plaintiff or plaintiffs, and all writs and process shall be made returnable and pleadings and papers therein filed, and rules therein entered, at the Clerk's office of the division wherein the cause is to be tried, according to the foregoing
provisions, and if not made so returnable and filed, such
97 papers and proceedings may be transferred to the proper
Clerk's office upon motion of the defendants or defendant
and by order of the Judge.

Practice in Criminal Causes.

XVII.

The proceedings and practice in criminal causes in this Court shall be substantially the same as that which now prevails in the Circuit Courts of the State of Florida, so far as the same is not inconsistent with, or repugnant to, the Constitution of the United States or the laws thereof, and the rules hereby adopted; but those sections of the Revised Statutes of Florida applicable to the apprehension of criminals, the preliminary hearing before committing magistrates, the punishment of crimes and misdemeanors and the form of warrant of sentence and commitment, shall not be held applicable to the proceedings of this Court, except in so far as the same has been made so by express statute of the United States.

XVIII.

The method of procedure in scire facias on recognizances in criminal cases shall be as follows: Upon the application of the United States Attorney, the Marshal shall call three times in open Court the name of the defendant and require him to appear to the cause. If no answer is received, the Marshal shall then call the name of each surety in the same manner, and require each in turn to produce the body of the said defendant in Court or be in default of the conditions of the said recognizance. If no response is then
made, the Clerk shall enter this fact upon the minutes of the
98 Court and shall then issue a scire facias on said recogni-
zance, in form as other writs of the Court, and shall make the
same returnable on the rule day as prescribed for summons ad respondendum. The said process shall be served by the Marshal in like manner as summons ad respondendum, and the United States

shall be entitled to default and final judgment as in causes at common law. The Clerk shall, however, enter the cause and number it upon the criminal dockets.

XIX.

Upon application in writing, filed with the Clerk, any person who is charged with the commission of an offence in this Court, shall be entitled to a copy of the indictment or information, the same to be made out by the Clerk and certified under the seal of the Court, and the Clerk shall not charge said defendant with the costs thereof, but shall be entitled to charge the same in the appropriate voucher of his quarterly account against the United States.

Practice in Common Law Causes.

XX.

In all common law causes in which the practice of this Court, or the forms and modes of procedure in common law causes are not provided for by the rules of this Court or the laws of the United States, the forms of pleadings and mode of proceeding and the rules of practice which are now in use and prevail in the State of Florida in common law cases, so far as the same are applicable and not in-
consistent with the laws of the United States, are hereby
99 adopted as the practice of this Court, subject particularly to
the following modifications and changes:

XXI.

The first Monday of each and every month are hereby designated as rule days, on such first Monday of each month the Court shall be deemed to be open and in session at each of the Clerk's offices, for the return of writs and process, for the entry of such judgments by default as are provided for by law and these rules; and also for the purpose of receiving, entertaining and disposing of all motions, rules, orders, and all other interlocutory proceedings which parties may make or apply for, and which by law or the practice of this Court may be entertained as of course, or which are grantable without the special order of the Judge; and at any one of the Clerk's offices where the judge may be present on any such rule day, the Court shall be deemed to be open and in session for all purposes whatsoever, except for the trial and final hearing of causes, but no final judgment or judgment by default or otherwise, shall be entered on such rule day, except such as are specially provided for by law or the rules of this Court.

XXII.

Personal actions for the recovery of debt or damage shall be commenced by summons only, according to the mode now in use in the State Courts, and the true cause of action shall be plainly expressed in the summons.

XXIII.

Process shall be issued by the Clerk upon the filing of a 100 præcipe signed by the party or his attorney, and process may issue at the Clerk's office in one division, returnable at the Clerk's office in the other division, the rule day at which the summons or other first process is returnable, shall be deemed the appearance day.

XXIV.

On or before the first day of each and every term of Court to which a jury may be sumoned, notice shall be given to the Clerk by the parties or their attorneys, of their desire for a trial in each cause then pending at common law, and thereupon it shall be the duty of the Clerk to make a trial docket of all cases so noted for trial, and no others will be docketed or called by the Court for trial at that term, except by consent.

Rules of Practice in Equity.

XXV.

It shall be the duty of every master in chancery, or other officer of this Court, making sales of real or personal property under decree of this Court, to report the same to the Court within ten days after the sale shall have been completed and the money paid into his hands, unless the time for filing such report shall have been extended by the Court, which report shall be confirmed as a matter of course, unless objections to the manner of the sale or to the form of the report are filed within twenty days after the said report shall have been filed.

XXVI.

At the time of making such report the special master shall 101 deposit in the registry of the Court all proceeds of whatever nature realized in the sale of any property.

XXVII.

Sales of personal property under execution of this Court, shall be public and shall be had on the premises upon which said property, is situated, unless otherwise ordered by the Court.

XXVIII.

If a replication is not filed by the next rule day, the complainant shall be deemed to have elected that the cause may be heard upon bill and answer, unless the Court shall, for sufficient cause, authorize a replication to be subsequently filed.

XXIX.

Copies of all motions, rules and orders, other than such as have been made or allowed after notice, shall be left at the office of the

Solicitor of the opposite party. All proceedings under such motions, rules and orders may be vacated, upon terms to be fixed by the Court, in case such notice has been given.

XXX.

Every Receiver operating a railroad under the authority of this Court, shall quarterly make and file with the Clerk, on the rule day of January, April, July and October of each year, a report of the operation of the said railroad, with a statement of his receipts and disbursements, in customary form, or in such form as the court may prescribe, and verified by his oath, which report shall be filed 102 with the Clerk, and be open to exception by any party interested in the litigation, for a period of thirty days. All the vouchers in support of such report and statement of account, shall remain in the proper department of the Receiver's office, subject at reasonable office hours, to a reasonable extent, to the inspection of any party interested in the litigation. Unless exceptions are filed to specified portions of said account and report, no reference thereof shall be made to a standing or special master, until the Receiver is ordered to pass his final account; and where exceptions are filed to any quarterly report and a reference asked or ordered on the Court's own motion, only so much of the report as is specifically questioned by the exceptions shall be referred. When any such reference is made, the Receiver shall produce before the master, on due notice from him, such papers and proper vouchers in the Receiver's hands as bear on the matter referred, but shall not require or permit the Receiver to surrender the custody of such vouchers or papers, unless his operation and control of the railroad is terminated.

XXXI.

Whenever in any railroad foreclosure proceeding, or other equity proceeding in which a Receiver is acting, an order is made for the printing and distribution of papers filed therein, or of orders and decrees of the Court, or of any of the Judges, made therein, the Clerk shall immediately on the filing of such papers, orders or decrees, make one duly certified copy thereof and deliver the same to the Receiver, who shall cause the same to be accurately printed as 103 certified, and the proper mark with the letters L. S. in capitals to designate the seal, and in a uniform octavo style suitable for binding. Such number of copies and such distribution thereof as the Court may order, the Receiver shall make or cause to be made, and the actual and reasonable costs thereof to be paid for and accounted as in case of his other disbursements.

General Rules of Procedure.

XXXIV.

All notices which are necessary in the progress of a cause unless by law or rules of Court, personal service is required, may be served by sending the same by registered mail, addressed to the party (or his attorney or solicitor if he have one) to be served therewith, at the post office nearest his place of residence or where he usually receives his letters, provided the party or his attorney to be served with such notice resides more than ten miles from the party giving the notice. And before any default or ex-party proceedings can be claimed, registry receipt from the party to whom notice shall have been sent, shall be submitted.

XXXV.

When causes now pending or hereafter brought in this Court, or removed thereto, where the counsel or other party controlling the litigation for either party to the cause, is not a resident of the District, a memorandum in writing, signed by such party, shall be filed in the cause, naming some other counsel residing in the District upon whom notice or papers may be served.

XXXVI.

104 Where any party to a cause has filed a deed, bond, note, or other paper in the cause, (not being pleadings or process in the cause) he, or his agents or attorneys may be permitted to withdraw the same from the files of the Court by order thereof, or of the Judge in vacation, or by written consent of the opposite party or his attorney. A copy of every original paper so withdrawn, attested by the Clerk, must be filed in the place of the original so withdrawn, and a receipt for the original must be filed with the papers in the case. In case where original books of entry have been offered in evidence the same may be withdrawn as above prescribed, without the copy above specified being left with the files.

XXXVII.

When any question of law shall be raised by the pleadings in any cause, either by demurrer or motion, the same may be disposed of by submission of any such question to the Court in chambers in the following manner: The party wishing to so dispose of the matter shall serve notice upon the opposite party or his attorney, that on a day therein named, which shall be at least ten days from the time of the service of such notice, he will submit such question, either upon brief or oral argument, at any place where the Court or Judge may be in chambers.

XXXVIII.

No demurrer shall be filed by either party to a cause after the filing of the formal replication or joinder of issue, unless leave of Court be granted for special reasons shown.

XXXIX.

105 No cause shall be placed on the trial list, unless issue be joined by a formal replication, and all issues of law arising upon the pleadings shall have been disposed of.

XL.

Amendments to pleadings or other papers on file, which can be made by striking out words, or by adding or interlining a few words, may be made on the original paper by using for that purpose ink of a different color from that used in writing the original, in such manner as to leave the original words still legible, and that the amendments may be distinguished from the original. Other amendments and supplementary matter shall be on separate paper, connected with the original by proper marks of reference, without a recapitulation of the original.

XLI.

Wherever a defendant has filed his petition and bond in the State Court within this District for the removal of a cause from the State Court to this Court, pursuant to any statute of the United States, either party may at any time thereafter, as of course, file a transcript required by law, in this Court, and serve written notice of such filing upon the adverse party or his attorney, and thereupon the adverse party shall be required to file his next pleading due in the regular course of said action, in the Clerk's office of this Court, on the rule day succeeding the filing of such transcript, unless ten days shall not intervene after the service of such notice, in which event such pleading shall be filed on the next succeeding rule day thereafter, and the Clerk shall docket in this Court such cause upon the filing of
106 the transcript. Default may be entered as in other causes, and such cause shall proceed in other respects as if originally begun in this Court.

Depositions.

XLII.

All formal objections to the taking of depositions shall be stated in writing before the cause is called for trial, and if not so stated it shall be considered as waived.

XLIII.

The Clerk is authorized to open any deposition filed in the cause on the request of either party or attorney, upon his indorsing the name of the party so requesting the deposition to be opened, the date of opening the same, with the signature of the Clerk, upon the envelope of such deposition.

XLIV.

A rule to take the deposition of ancient, infirm or going witnesses, to be read in evidence on the usual terms, is of course, and may be entered by and at the instance of either party to a cause, so of a rule for a commission to any of the United States, or to foreign parts. Testimony taken under a commission shall be by interrogatories and cross interrogatories.

XLV.

A rule may be entered by either party to a cause, to take depositions of witnesses without regard to the circumstances of being either ancient, infirm or going witnesses, provided, however, seven days' notice to the adverse party be given, subject, nevertheless, in all other respects to existing rules and regulations of law.

107

XLVI.

Notwithstanding a rule may be obtained for a commission to take depositions of witnesses, yet in case the witness is resident within the district and within one hundred miles of the place of trial, the deposition or commission shall not be read in evidence, unless the party offering it shall satisfy the Court that subpœna has been actually issued and that the witness has been duly subpœnaed, or could not be found after a reasonable search by the Marshal, or that the witness is physically unable to attend.

XLVII.

On all motions or rules to show cause, on the hearing of which facts are to be investigated, the testimony of witnesses shall be taken by depositions in writing before a Judge, Magistrate, Alderman, Notary Public or United States Commissioner, upon forty-eight hours' notice in writing to the opposite party or his attorney, and no witness shall be examined at the bar, unless by previous special order of the Court. This rule shall not be construed, however, to abrogate the practice of submitting affidavits in support of motions, rules, etc., where the same is now recognized by the practice of the Courts of the United States.

XLVIII.

On the return and opening of any commission, or filing of any deposition, either party may, by giving notice thereof to the opposite party, file with the Clerk, within seven days after the service of such notice, a specification of his exceptions, if he have any, 108 to the form or execution of the commission, or the taking of the deposition, or to the mode of swearing the witnesses, or to any of the acts or omissions of the commissioners, examiners, or officers, or any other person or persons, who have discharged any duty in and about the same. No exception to the admissability of the evidence so returned or filed, not included in the specifications, shall be taken on the trial of the cause unless it be an exception that might be taken to the evidence of the witness if he were offered for examination orally in Court; provided that nothing herein be construed to prevent or sanction the reading on the trial in any cause of the answer or deposition of any witness resident within one hundred miles of the place of trial, save as hereinbefore provided. In all cases of exceptions filed as above specified, by either party, the party filing same, shall within ten days have them set down for hearing and shall proceed with reasonable diligence to obtain a decision thereon. failure in this respect will be considered as a waiver of the exceptions.

Costs.

XLIX.

In every action in which the complainant or plaintiff or any of them is or are not at the time of the bringing of the suit a resident of the State of Florida and of the Northern District thereof, or being so, afterwards removes from the District, and in every case where a defendant, his agent or attorney shall make affidavit that he believes the costs could not be recovered from the plaintiff by attachment or execution, a rule for security for costs may be entered, upon due notice, and in default of such security being 109 given at the time designated by the Court, judgment of non suit shall be entered on motion, but nothing herein contained shall impair the right of any party to a cause to file an affidavit in conformity with An Act of Congress Approved July 20, 1892, and thus avoid the provisions of this rule.

L.

Hereafter, whenever security for costs shall be given, it shall be substantially in the following form, to-wit: A. B.-vs.-C. D. Circuit Court of the United States, Northern District of Florida. I enter myself security for the costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, and which may be adjudged to be paid by the plaintiff (defendant) or which may be due and payable by the plaintiff (defendant) to any officer of this Court for services or fees in the above suit, and in default of payment by the plaintiff (defendant) of any such costs ordered or adjudged to be paid, or becoming due and unpaid, I hereby agree and stipulate that execution may issue against my property for such costs so adjudged. Dated this — day of —— A. D. 19— (Signed) E. F. and G. H. And in case the plaintiff (defendant) shall not pay any and all costs taxed against him within fifteen days after the same have been taxed, it shall be lawful for the Clerk to issue a fee bill attached to execution against the sureties for such costs, and the Marshal shall proceed on said execution as in other cases.

LI.

The Clerk may before the commencement of any action in this Court demand a stipulation for costs including the estimated 110 fees of the Clerk and Marshal which will be incurred in and about the suit, in the form above prescribed, excepting the clause relating to the costs of the opposite party, but the party shall have the option of depositing with the Clerk the estimated costs in cash. But this stipulation shall under no circumstances exceed the sum of Twenty-five dollars for Clerk's costs and thirty-five dollars for Marshal's costs, excepting where a receiver in an equity action is asked and granted, and in such cases a stipulation for One hundred dollars may be required. No Attorney, Clerk, Marshal, or Deputy Marshal of this Court shall be received as surety for costs on any bond or stipulation taken in this Court. The above shall not be construed to impair the right of any person to file an affidavit in conformity with An Act of Congress Approved July 20th, 1892, permitting persons to sue in forma pauperis, but upon the filing of the affidavit therein prescribed, the cause shall be docketed without the prepayment or demand thereof of any costs or charges.

LII.

If a party shall at any stage of the cause file an affidavit in forma pauperis under An Act of Congress Approved July 20th, 1892, seeking to avoid the prepayment of any costs, and the opposite party, or any officer of this Court to whom costs are or may become due and payable, if said affidavit had not been filed, desires to contest the right of said party, to so proceed, he or they may do so by filing a traverse of the facts alleged in the affidavit. The party so contesting the right to proceed under said Act shall have the
111 right to file interrogatories addressed to the party so filing
an affidavit in forma pauperis, touching the matters in controversy in said issue, which interrogatories shall be answered under oath. The matter shall be submitted to the Court on depositions or affidavits as other rules or motions.

LIII.

All bills of costs shall be taxed in the first instance by the Clerk, if taxation be required, subject to an appeal to the Court, provided the party wishing to perfect an appeal, shall within fifteen days after the bill of taxation of costs shall have been filed with the other papers in the case, file in the Clerk's office a notice of such appeal together with a specification of the items to which he objects and the grounds of his objection, otherwise the appeal shall be considered as abandoned, and the costs paid according to the taxation by the Clerk.

LIV.

Any party intending to tax costs in a suit before the Clerk, shall give the opposite party or his attorney tweny-four hours' notice, where such party or his attorney resides in the same town or city as the Clerk's Office, and three days' notice, where such party or his attorney resides elsewhere. The time for such taxation shall be fixed in the notice, and at the Clerk's office where the papers are on file.

LV.

In cases settled by the parties without making provisions for the payment of costs, the Clerk may at the time of such settle-
112 ment, on application to the Court, have a rule on the plain-
tiff to pay all costs taxed, and if not paid on or before the day named in the rule, execution may issue, unless cause may be shown to the contrary.

LVI.

Where for a period of two years no steps have been taken by either party to a suit, on application of the Clerk or other officer of the Court to whom costs are due and payable, or where stipulation for the same has been given, the Court will order a taxation of the same to the time of such application, and the party liable therefor shall thereupon pay the same, and on failure to do so on demand, execution may issue against him and his sureties for the costs so taxed.

LVII.

All stipulations or bonds for costs, executed by the Clerk or any Commissioner of this Court in civil and criminal causes, shall be so drawn as to specifically cover the payment of all costs which may accrue to the United States by reason of its right to the fees earned by certain officers of the Court.

LVIII.

Whenever a continuance is granted to either party upon the payment of the costs of the term, or where costs are awarded against either party during the pendency of the suit, for any neglect, default or mispleading, it shall be lawful for the party in whose favor such costs are granted to serve a copy of the bill of costs upon the opposite party or his or their securities or attorneys, with a certified copy of the rule entered in the cause, and if the party against whom
113 such costs are awarded, or his or their securities shall fail to pay the same within twenty days after such service, it shall be the duty of the Clerk, if requested, to issue execution, returnable to the next succeeding term, and thereafter all proceedings shall be staid until said execution shall be satisfied.

United States Commissioners.

LIX.

Each Commissioner, before issuing a warrant for the arrest of any person charged with the commission of a crime or offence against the laws of the United States, will satisfy himself that the party proposing to make the affidavit, is responsible and of good moral character for truth, and by personal examination of all the facts and circumstances within the knowledge of the accuser or accusers, determine whether sufficient and probable cause exists for issuing a warrant for his apprehension.

LX.

Each Commissioner, and all officers of this Court authorized by law to issue writs which are to be executed by the United States Marshal, are required to forward to the office of the Marshal at Pensacola all process issued by them, unless it shall appear that immediate service is necessary, in which event they may deliver such process directly to the deputy who may have been designated by the Marshal and when process is so delivered directly to the deputy a report of the same shall be immediately transmitted to the Marshal's office by such deputy, containing sufficient information to enable the Marshal to docket the writ.

114

LXI.

Each Commissioner, upon the final disposition of a cause, shall make and sign a memorandum of the same, and endorse thereon the amount of his fees, the fees of the witnesses attending before him, and the Clerk shall file the same with the other papers in the cause, which shall be used to facilitate the taxation of the costs therein, and as the commencement of the record of the cause in the Court.

LXII.

Each Commissioner shall on the hearing of the cause, determine the true name of the defendant, and shall insert on the back of the affidavit and elsewhere, when practicable, the Christian name of the defendant, and if an error be made in inserting his name in previous papers issued or filed in the cause, it must be corrected.

LXIII.

At the end of each month or within four days thereafter each Commissioner shall forward to the Clerk of the Court all the original papers in all cases disposed of by him, together with a brief transcript of the facts given in evidence at the hearing. The testimony of the witnesses shall be taken in writing in every case where the District Attorney is not present, and in every case where the District Attorney or the defendant shall demand the same. Each Commissioner shall at the time of sending the papers to the Clerk send a brief report of each cause disposed of by him during the month and a list of the papers transmitted by him during the month to the
Clerk. He shall present his quarterly accounts against the
115 United States to the Court through the District Attorney and
in duplicate, and when said accounts shall have been approved the duplicate shall be filed in the Clerk's office as a part of the records of the Court.

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Rules of the Circuit Court Only.

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121 At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the nineteenth day of May A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-first day of May A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-second day of May A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-third day of May A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G" page 1.

122 At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-fourth day of May A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-fifth day of May A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-sixth day of May A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City

of Pensacola on the twenty-eighth day of May A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G," page 2.

123 At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-ninth day of May A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the thirtieth day of May A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the thirty-first day of May A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the first day of June A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G," page 2.

124 At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the second day of June A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City

of Pensacola on the fourth day of June A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the fifth day of June A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

Minute Book "G," page 3.

125 In Chancery.

THE UNITED STATES
vs.
JAMES L. MEDLIN et al.

This cause coming on to be heard upon the pleadings therein, and it appearing that the defendant, James L. Medlin, has produced and surrendered to the Court the patents described in the bill, viz: The patent issued to John Ivey, No. 17761 for the N. W. ¼ of Section (26) twenty-six, Township twelve (12), South of Range (17) Seventeen, East of Tallahassee Meridian, containing 159 80/100 acres, dated October 10th, 1902.

The patent to Flavor Campbell No. 17758 for the S. E. ¼ of Section twenty-six (26) in township twelve (12) South of range seventeen (17) East of Tallahassee Meridian, containing One Hundred and fifty-nine and 80/100 acres. The patent to Lewis Hines to S. W. ¼ of Section twenty-six (26), Township twelve (12), South of Range seventeen (17) East of Tallahassee Meridian, containing One Hundred and fifty nine and 80/100 acres. The patent to Rafford Brewton, No. 17759 for the N. E. ¼ of Section twenty-six (26) in township twelve (12), south of range seventeen (17), East of Tallahassee Meridian, containing One Hundred and fifty nine and 80/100 acres, all dated September 2nd, 1902. It is therefore considered that the said patents held by the said James L. Medlin be and the same are hereby cancelled, annulled and set aside, and the Clerk of this Court is hereby authorized to inscribe the effect of this order upon the face of the said patents, and that the said defendants, James L. Medlin and John Ivey, are forever enjoined from setting up any title, claim or right to the lands described in said patents, or from any of the named patentees, by deed, license, lease or other privilege desired by virtue of said patents.

It is further ordered, adjudged and decreed that James L. Medlin do pay the costs of the proceeding.

Ordered, adjudged and decreed this 5th day of June, A. D. 1906.

CHAS. SWAYNE, *Judge.*

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G," pages 3-4.

126 At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the sixth day of June, A. D. 1906—present, the Honorable Charles Swayne, Judge—among the proceedings had were the following, to wit:

THE UNITED STATES OF AMERICA
vs.
THE J. J. McCASKILL COMPANY, **a Corporation under the Laws of Florida.**

This cause coming on to be heard, and was argued by Counsel for the United States and for the defendant respectively, and thereupon upon consideration thereof, it — ordered, adjudged and decreed by the Court that each and all of the objections of the defendant to the evidence of the complainant, and the motion of the defendant that it be stricken, are overruled and denied, and that the patent from the United States to William Josiah Ward, issued by the Department of the Interior, and dated the 3rd day of June, 1903, and numbered 18026, embracing the following described lands, to-wit: North half of the North-east quarter (N. ½ of N. E. ¼), South-west quarter of the North-east quarter (S. W. ¼ of N. E. ¼), and the South-east quarter of the North-west quarter (S. E. ¼ of N. W. ¼) of Section Eight (8) in Township One (1), North of Range Seventeen (17) West, containing one hundred and sixty acres of land (160), situate, lying and being in the County of Walton, State of Florida, and designated in said patent as the homestead entry of said William Josiah Ward, be, and the same is hereby declared null and void and — no effect as a conveyance of the described land, and it appearing that the said patent is in the possession of the defendant as a muniment of title, it is further ordered and decreed that the same be surrendered and delivered up for cancellation, and produced to the Clerk of this Court, to be inscribed by him "null and void" by virtue of this decree.

It is further ordered, adjudged and decreed that the deed from said William Josiah Ward to J. J. McCaskill and Company, dated the 4th day of September, 1903, purporting to convey the same lands described in said patent, and being one of the mesne conveyances to the defendant Company be, and the same is hereby

Minute Book "G," pages 4-5.

127 vacated, set aside and declared to be null and void as a conveyance of the said lands, and the same is ordered to be likewise inscribed, and that the record thereof in the record of deeds of Walton County, Florida, be inscribed on the margin to that effect,

and that the original thereof be surrendered and delivered up to the Clerk of this Court to be cancelled and avoided.

It is further ordered, adjudged and decreed that the deed from the said J. J. McCaskill and Company, to the J. J. McCaskill Company, a corporation, dated the — day of ——, 190—, purporting to be a conveyance of said lands inter se and predicated upon the deed from said Ward to the land embraced in said patent, be and the same is hereby vacated, annulled and set aside, and declared to be void as a conveyance of said land to defendant, and that the same be produced and delivered up for cancellation, and that same be inscribed by the Clerk as void and of no effect, and that the record thereof be inscribed with notice of this decree, and that defendant, the J. J. McCaskill Company, be and it is hereby enjoined forever from setting up or claiming title to the said land, by reason of the said patent or of any of the mesne conveyances from said Ward to the said defendant.

Ordered and adjudged and decreed this 6′ day of June, A. D. 1906.

CHAS. SWAYNE, *Judge.*

T. D. QUIGLES et al., Plaintiffs,
vs.
MARTIN LINDSAY, Defendant.

This 6th day of June, A. D. 1906, came the plaintiffs by their attorney, and file herein and transmit to the Court their petition praying for the allowance of a writ of error and assignment of errors intended to be urged by them, praying that a transcript of the record, proceedings and papers, upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Judicial Circuit, and that such other and further proceedings be had as may be proper in the premises.

Whereof, it is considered by the Court that the writ of error be allowed upon the plaintiffs given- bond, according to law, in the sum of $250, which shall operate as a supersedeas bond.

CHAS. SWAYNE, *Judge.*

Minute Book "G," page 5.

128 JACKSON LUMBER COMPANY, Complainant,
vs.
CHARLES F. TURNER, Tax Collector, Respondent.

Taxes for 1904.

This cause coming on to be heard upon the 30th day of May, A. D. 1906, upon the demurrer to the amended bill of complaint, and after hearing the argument of counsel for the respective parties, and in consideration thereof, the Court being advised of its opinion.

It is hereby ordered, adjudged and decreed that the said demurrer be and the same is hereby overruled with leave to the respondent to file his answer to the amended bill of complaint on or before the first Monday in July, 1906.

Done and ordered at Chambers in the City of Pensacola, this 6th day of June, A. D. 1906.

CHAS. SWAYNE, *Judge.*

JACKSON LUMBER COMPANY, Complainant,
vs.
CHARLES F. TURNER, Tax Collector, Respondent.

Taxes for 1905.

This cause coming on to be heard upon this, the 6th day of June, A. D. 1906, upon the demurrer to the bill of complaint, and it appearing that the Respondent objects to the hearing of the Demurrer because of not having been given sufficient notice of such hearing.

And it appearing that said complainant submits in open Court, the said demurrer for hearing, and the Court being advised of its opinion.

It is hereby ordered that due notice be given to the said Respondent, or to his Counsel, that he will be allowed fifteen (15) days from the date of this order in which to file such brief as he may be advised.

It is further ordered that due service of this order be made upon this respondent.

Done and ordered at Pensacola, in Chambers, this 6th day of June, A. D. 1906.

CHAS. SWAYNE, *Judge.*

It is ordered that pending the absence of the presiding judge of this Court that the same be opened and adjourned in pursuance of rule XIII of the rules of practice of this Court.

Minute Book "G," page 6.

129 THURSDAY, *June* 7, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

United States Commissioner's papers filed and entered this date.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

FRIDAY, *June* 8, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

SATURDAY, *June* 9, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

MONDAY, *June* 11, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

TUESDAY, *June* 12, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Exceptions to the report of Special Master in the case of the Louisville & Nashville Railroad Co., vs. N. B. Broward et al. were filed and entered.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

WEDNESDAY, *June* 13, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Minute Book "G," page 7.

130 It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

THURSDAY, *June* 14, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

United States Commissioner's papers filed and sent in this date.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

FRIDAY, *June* 15, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

The petition of the United States against The J. J. McCaskill Co. to amend a decree in said suit was filed and entered.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

SATURDAY, *June* 16, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

A claim of creditors was filed in re estate of Deceased Seamen, William Thompson.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

MONDAY, *June* 18, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

TUESDAY, *June* 19, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

United States Commissioner's papers filed and entered on this date.

Minute Book "G," pages 7-8.

131 It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

WEDNESDAY, *June* 20, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

THURSDAY, *June* 21, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

FRIDAY, *June* 22, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

SATURDAY, *June* 23, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

MONDAY, *June* 25, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Minute Book "G," page 8.

132 It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

TUESDAY, *June* 26, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

United States Commissioner's papers filed and entered on this date.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

WEDNESDAY, *June* 27, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

JACKSON LUMBER CO., a Corporation,
vs.
CHARLES F. TURNER, Tax Collector.

Bill for Injunction, No. 2.

The matter of the demurrer in the above entitled bill, filed June 2nd, 1906, after full notice to all parties in interest, and being submitted on briefs by the respective Counsel, and the Court being fully advised thereon.

It is hereby ordered, adjudged and decreed that the said demurrer is overruled, and the respondent, Charles F. Turner, is given until the first Monday in August in which to plead or answer.

Done this 25th day of June, 1906.

CHAS. SWAYNE, *Judge.*

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

THURSDAY, *June* 28, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G," page 9.

133 FRIDAY, *June* 29, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

SATURDAY, *June* 30, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

MONDAY, *July* 2, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Answer of defendant in case of Jackson Lumber Co. vs. Charles F. Turner filed.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

TUESDAY, *July* 3, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Agreement to extend time to plead in case Calhoun vs. Aycock Bros. Lumber Co. filed.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

WEDNESDAY, *July* 4, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G," page 10.

134 THURSDAY, *July* 5, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Demurrer to declaration in case, Bryant vs. Aycock Bros. Lumber Co. filed.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

FRIDAY, *July* 6, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Papers from United States Commissioners received and filed.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

SATURDAY, *July* 7, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

MONDAY, *July* 9, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

TUESDAY, *July* 10, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G," page 10.

135 WEDNESDAY, *July* 11, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

THURSDAY, *July* 12, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Bill of complaint and process issued in case United States vs. Maloy Bros. et al.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

FRIDAY, *July* 13, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

SATURDAY, *July* 14, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

MONDAY, *July* 16, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

United States Commissioner's papers filed as received and sent in.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G," page 11.

136 TUESDAY, *July* 17, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Order setting down demurrer in Bryant et al. vs. Aycock Bros. Lumber Co., filed.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

WEDNESDAY, *July* 18, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

THURSDAY, *July* 19, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

FRIDAY, *July* 20, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

United States Commissioner's papers received as sent in and filed.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

SATURDAY, *July* 21, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G," pages 11-12.

137 MONDAY, *July* 23, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Marshal's return filed and entered to subpœna in case United States vs. Maloy Bros. et al.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

TUESDAY, *July* 24, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

WEDNESDAY, *July* 25, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

United States Commissioner's papers received as sent in and filed.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

THURSDAY, *July* 26, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

FRIDAY, *July* 27, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G," page 12.

138 SATURDAY, *July* 28, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

United States Commissioner's papers received as sent in and filed.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

MONDAY, *July* 30, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

TUESDAY, *July* 31, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

United States Commissioner's papers received as sent in and filed.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

WEDNESDAY, *August* 1, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

THURSDAY, *August* 2, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G," pages 12-13.

139 FRIDAY, *August* 3, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Order entered dismissing cause of Langellier vs. Peters, on præcipe filed.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

SATURDAY, *August* 4, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Appearance of defendant entered in case, United States vs. U. Potts et al.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

MONDAY, *August* 6, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Answer of defendant filed in case of International Land Co., vs. Adams et al.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

TUESDAY, *August* 7, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

WEDNESDAY, *August* 8, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G," page 13.

140 THURSDAY, *August* 9, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

FRIDAY, *August* 10, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

SATURDAY, *August* 11, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

MONDAY, *August* 13, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

TUESDAY, *August* 14, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G," page 14.

141 WEDNESDAY, *August* 15, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

THURSDAY, *August* 16, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Plaintiff's declaration in suit of Addie Frazier vs. Aycock Bros. Lumber Co.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

FRIDAY, *August* 17, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

SATURDAY, *August* 18, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

MONDAY, *August* 20, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G," page 14.

142 TUESDAY, *August* 21, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

WEDNESDAY, *August* 22, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

THURSDAY, *August* 23, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

FRIDAY, *August* 24, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

SATURDAY, *August* 25, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G," page 15.

143 MONDAY, *August* 27, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

TUESDAY, *August* 28, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

United States Commissioner's papers sent in and filed in a criminal case.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

WEDNESDAY, *August* 29, 1906.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

THURSDAY, *August* 30, 1906.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

FRIDAY, *August* 31, 1906.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Minute Book "G," page 15.

SATURDAY, *September* 1, 1906.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

MONDAY, *September* 3, 1906.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Exceptions to answer of defendant filed in suit of Jackson Lumber Co. vs. Turner.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

TUESDAY, *September* 4, 1906.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

WEDNESDAY, *September* 5, 1906.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

THURSDAY, *September* 6, 1906.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Minute Book "G," pages 15-16.

145 FRIDAY, *September* 7, 1906.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

SATURDAY, *September* 8, 1906.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

MONDAY, *September* 10, 1906.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

TUESDAY, *September* 11, 1906.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

WEDNESDAY, *September* 12. 1906.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Minute Book "G," page 16.

146 **THURSDAY, *September* 13, 1906.**

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

The complainant's replication filed in suit if United States vs. Maloy Bros. et al.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

FRIDAY, *September* 14, 1906.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Court was opened pursuant to the said order; present the Clerk and Marshal.

SATURDAY, *September* 15, 1906.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

MONDAY, *September* 17. 1906.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

TUESDAY, *September* 18, 1906.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Notice of taxation of costs filed in suit of Quigles et al. vs. Lindsay et al.

Minute Book "G," page 17.

147 WEDNESDAY, *September* 19, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

THURSDAY, *September* 20, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Præcipe filed and process issued in suit of J. J. McCaskill Co. vs. James Dixon.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

FRIDAY, *September* 21, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Costs taxed and judgment therefor entered in the suit of Quigles vs. Lindsay.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

SATURDAY, *September* 22, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

United States Commissioner's papers sent in and filed by Clerk.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

MONDAY, *September* 24, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book G, page 18.

148 TUESDAY, *September* 25, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

WEDNESDAY, *September* 26, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

THURSDAY, *September* 27, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Summons ad res. returned, filed and entered, in case, J. J. McCaskill Co. vs. Dixon.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

FRIDAY, *September* 28, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

SATURDAY, *September* 29, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book G, page 18.

149 MONDAY, *October* 1, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

TUESDAY, *October* 2, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Pleas of defendant filed in the suit of Frazier vs. Aycock Bros. Lumber Co.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

WEDNESDAY, *October* 3, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

THURSDAY, *October* 4, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

FRIDAY, *October* 5, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book G, page 19.

150 SATURDAY, *October* 6, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

MONDAY, *October* 8, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

TUESDAY, *October* 9, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

WEDNESDAY, *October* 10, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

THURSDAY, *October* 11, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book G, page 19.

151 **FRIDAY, *October* 12, 1906.**

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

SATURDAY, *October* 13, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

MONDAY, *October* 15, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Marshal's return to writ of attachment filed and entered in J. J. McCaskill vs. Dixon.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

TUESDAY, *October* 16, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

WEDNESDAY, *October* 17, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book G, page 20.

152 THURSDAY, *October* 18, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

FRIDAY, *October* 19, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

SATURDAY, *October* 20, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

MONDAY, *October* 22, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

TUESDAY, *October* 23, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

U. S. Commissioner's papers filed, and præcipe and subpœnas issued.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book G, page 21.

153 WEDNESDAY, *October* 24, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

Ordered, that there be drawn from the Jury Box by the Clerk and Marshal of this Court, in accordance with the rules and practice thereof, the names of thirty-six persons, competent and qualified to serve as petit jurors in said Court, for whom a venire facias shall issue returnable on the 12th day of November, 1906.

Oct. 23, 1906.

DAVID D. SHELBY,
United States Circuit Judge.

Ordered in accordance with the rules and practice of this Court, that a grand jury be empaneled therein on the 7th day of November, 1906, and that the Clerk and Marshal draw from the Jury Box the names of twenty-three competent and qualified persons who shall be summoned to serve as grand jurors in said Court at said time.

Oct. 23, 1906.

DAVID D. SHELBY,
United States Circuit Judge.

In compliance with the above orders, on this 24th day of October, A. D. 1906, in open Court, the United States Marshal and the Clerk of this Court did draw from the Jury Box of this Court, the said jury box containing at the time of the commencement of said drawing, the names of 536 persons, placed therein in compliance with law, who were qualified and competent for jury service, the following names for service as Grand Jurors:

1. B. J. Hart, Jackson.
2. Blair S. Bernard, Escambia.
3. J. B. Dougherty, Escambia.
4. W. H. Flemming, Washington.
5. James L. Long, Escambia.
6. J. George Turner, Escambia.
7. F. Plank, Walton.
8. J. George White, Escambia.
9. Ben D. Beers, Escambia.
10. George B. Green, Escambia.
11. Henry Wood, Washington.
12. Fred S. Mellen, Escambia.
13. Attilla F. Mallory, Escambia.
14. Walter T. Williams, Escambia.
15. Morris Bear, Escambia.
16. J. B. Dickson, Jackson.
17. John L. Borras, Escambia.
18. C. W. Davis, Jackson.
19. Oliver J. Semmes, Escambia.
20. L. M. Davis, Escambia.
21. Albert J. Massey, Escambia.
22. Joe Wilkerson, Walton.
23. George Farley, Jackson.

Whereupon a venire was duly issued for their summons.

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154 And the following names for service as Petit Jurors:

1. Wm. G. Dailey, Escambia.
2. N. Berlin, Escambia.
3. A. D. Alfred, Escambia.
4. Louis Boley, Escambia.
5. Richard Morris, Escambia.
6. A. G. Chandlee, Washington.
7. J. E. Caeby, Washington.
8. A. Sims, Holmes.
9. Edward Forcheimer, Escambia.
10. S. W. Davis, Washington.
11. P. L. Biddle, Walton.
12. Wm. M. Falk, Escambia.
13. John Massey, Escambia.
14. Burrus Cawthon, Walton.
15. John E. Maxwell, Escambia.
16. Carter W. King, Escambia.
17. J. A. Gilmore, Escambia.
18. C. Hartmann, Escambia.
19. Thomas L. Holt, Escambia.
20. John G. Welsh, Escambia.
21. John G. Ward, Escambia.
22. J. H. Parmlee, Walton.
23. B. L. Gundersheimer, Escambia.
24. Robt. H. Langford, Escambia.
25. Jules E. Dubuisson, Escambia.
26. A. Hebrun, Escambia.
27. N. L. Pindar, Jackson.
28. Chas. Kruger, Escambia.

29. E. Carkhuff, Washington.
30. Walker Anderson, Escambia.
31. N. Cuyler McMillan, Escambia.
32. J. H. Friedrickson, Escambia.
33. Lusius S. Brown, Escambia.
34. J. Clark Porter, Escambia.
35. T. H. Harmon, Washington.
36. R. B. Simpson, Escambia.

Whereupon a process of venire facias was issued in due form for their summons.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

THURSDAY, *October* 25, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

FRIDAY, *October* 26, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book G, page 22.

155 SATURDAY, *October* 27, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

MONDAY, *October* 29, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

A demurrer to the declaration filed in the case of Seeley vs. Wright.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

TUESDAY, *October* 30, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

United States Attorney filed præcipe for process of subpœna and same issued.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

WEDNESDAY, *October* 31, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

THURSDAY, *November* 1, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

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156 FRIDAY, *November* 2, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

I, R. P. Reese, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic: that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of Assistant U. S. Attorney for the Northern District of Florida on which I am about to enter. So Help Me God.

R. P. REESE.

Where born (State only) Texas. Whence appointed. State, Florida. County of Escambia. Congressional District, Third.

Subscribed and sworn to before me this second day of November, A. D. 1906.

[SEAL.] F. W. MARSH,
Clerk U. S. Dist. Court, Nor. Dis. Fla.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

SATURDAY, *November* 3, 1906.

Court was opened pursuant to the said order; present the Clerk and the Marshal.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the fifth day of November, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until to morrow morning at 10 o'clock.

Minute Book "G," page 23.

157 At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the sixth day of November, A. D 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the seventh day of November, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

Those drawn and summoned as grand jurors were called, and the following persons answered: 1. B. J. Hart, 2. W. H. Flemming, 3. F. Plank, 4. Henry Wood, 5. Morris Bear, 6, C. W. Davis, 7. Joe Wilkerson, 8. Blair S. Bernard, 9. James L. Long, 10. J. George White, 11. Fred S. Mellen, 12. Oliver J. Semmes, 13. George Farley, 14. J. B. Dougherty, 15. J. George Turner, 16. George B. Green, 17. L. M. Davis, who were sworn on their voir dire in due form of law, and upon examination in Court found qualified as Grand Jurors.

The Marshal returned the venire heretofore issued for such Grand Jurors, wherein it appears that Ben D. Beers, Walter T. Williams, and Albert J. Massey were not found.

It was ordered that J. B. Dickson be excused from attendance on certificate of physician.

It was ordered that Attala F. Mallory be excused from attendance in excuses presented to Court.

Minute Book "G," page 24.

158 It was ordered that John L. Borras be excused from attendance as it appears to Court that he is not a citizen of the United States.

It was ordered by the Court that an additional number of names to the number of ten (10) be drawn from the jury box by the Clerk and Marshal instanter, and that a venire issue thereupon requiring their attendance as Grand Jurors at the present term of Court, at 2:30 P. M. this day.

And thereupon the Clerk and Marshal drew in open Court, in compliance with the above order, the following names, to-wit:

1. Lee Daniel, Escambia.
3. M. A. Dubuisson, Escambia.
5. Patrick Eagan, Escambia.
7. O. H. Smith, Jr., Escambia.
9. Samuel Rosenau, Escambia.
2. J. Golson, Escambia.
4. William Davidson, Santa Rosa.
6. William K. Hyer, Jr., Escambia.
8. William E. Pearl, Escambia.
10. Henry Jeudevine, Escambia.

Upon motion of William B. Sheppard Esq., and upon exhibition of a certificate under the hand and seal of the United States Circuit Court for the Southern District of Florida, showing his admission to practice at the bar of said Court, Emmet Wilson Esq., was permitted to take the prescribed oath, and upon his doing so in open Court, it was ordered that he be admitted to practice as an attorney, etc., in this Court.

Those drawn and summoned as additional Grand Jurors were called, and the following persons answered to their names. 1. Lee Daniel, 2. J. Golson, 3. M. A. Dubuisson, 4. Patrick Eagan, 5. O. H. Smith Jr., 6. Henry Jeudevine, who were sworn on their voir dire in due form of law, and with the exception of Patrick Eagan, upon examination in open Court found qualified as Grand Jurors.

The Marshal returned the venire heretofore issued for such Grand Jurors, wherein it appears that William Davidson, William K

Hyer Jr., William E. Pearl, and Samuel Rosenau were not found or served.

Ordered that Patrick Eagan be discharged from further attendance, he being disqualified.

The names of those summoned, attending and found qualified as Grand Jurors in this Court at this term were called, and answered as

Minute Book "G," page 25.

159 follows: 1. L. M. Davis, 2. B. J. Hart, 3. W. H. Flemming, 4. F. Plank, 5. Henry Wood, 6. Morris Bear, 7. C. W. Davis, 8. Joe Wilkerson, 9. Blair S. Bernard, 10. James L. Long, 11. J. George White, 12. Fred S. Mellen, 13. Oliver J. Semmes, 14. George Farley, 15. J. B. Dougherty, 16. J. George Turner, 17. George B. Green, 18. Lee Daniel, 19. J. Golson, 20. M. A. Dubuisson, 21. O. H. Smith Jr., 22. Henry Jeudevine. And L. M. Davis being appointed foreman of said Grand Jury by the Court, took in open Court the prescribed oath for a Grand Juror, as did also each and all the other Grand Jurors so called and named as aforesaid, and after being instructed by the Court, retired to deliberate.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the eighth day of November, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

Upon motion of E. D. Beggs Esq., and upon exhibition of a certificate under the hand and seal of the Clerk of the Circuit Court of the United States for the Eastern District of Virginia, showing his admission to the Bar of said Court, W. B. Barton was permitted to take the prescribed oath, and upon his doing so in open Court, it was ordered that he be permitted to practice as an attorney, etc., in this Court.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the ninth day of November, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

Minute Book "G," page 26.

160 PORTLAND CHEMICAL & PHOSPHATE

vs.

EDWARD E. BLODGETT.

This cause coming on to be heard upon application of the defendant for an extension of time in which to take testimony, and the said parties having been heard by their respective attorneys, and the Court being advised of its opinion therein:

Now, therefore, it is ordered that motion be and the same is hereby granted, and that the time for taking the testimony herein be and the same is extended to the 26th day of November, A. D. 1906.

It is further ordered that F. W. Marsh Esq., be and he is hereby appointed examiner to take said testimony.

Done in Pensacola, Florida, this 8th day of November, A. D. 1906.

CHAS. SWAYNE, *Judge.*

Ordered that George Farley, a Grand Juror, be discharged from further attendance on his own request, and for cause shown.

Ordered that C. W. Davis, a Grand Juror, be discharged from further attendance, on his own request, and for cause shown.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the tenth day of November, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twelfth day of November, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

Minute Book G, page 27.

161 Those drawn as petit jurors for attendance at this term of Court, were called, and the following persons answered. 1. Wm. G. Dailey, 2. N. Berlin, 3. A. D. Alford, 4. Louis Boley, 5. Richard Morris, 6. A. G. Chandlee, 7. J. E. Cailey, 8. A. Sims, 9. Edward Forsheimer, 10. P. L. Biddle, 11. Wm. M. Falk. 12. John Massey, 13. Burrus Cawthon, 14. John E. Maxwell, 15. J. A. Gilmore, 16. C. Hartman, 17, Thomas L. Holt, 18, John G. Welsh, 19. John G. Ward, 20. N. L. Pender, 21. B. L. Gundersheimer, 22. J. E. Dubuisson, 23, E. Carkhuff, 24, N. C. McMillan, 25, J. H. Frederickson, 26. Lusius S. Brown, 27. J. Clark Porter, 28. T. H. Harmon, 29. R. B. Simpson.

The Marshal returned S. W. Davis, Carter W. King, J. H. Parmellee, Robert H. Langford, Charles Kruger, A. Heburn, as parties not found.

Ordered that Wm. G. Dailey, be excused from further attendance as a juror.

Ordered that Louis Boley, be excused from further attendance as a juror.

Ordered that J. E. Cailey, be excused from further attendance as a juror.

Ordered that Burrus Cawthon, be excused from further attendance as a juror.

Ordered that John G. Ward, be excused from further attendance as a juror.

Ordered that N. C. McMillan, be excused from further attendance as a juror.

Ordered that J. Clark Porter, be excused from further attendance as a juror.

Ordered that A. Sims, be excused from further attendance as a juror.

Ordered that A. D. Aldord, be excused from further attendance as a juror.

Ordered that John Massey, be excused from further attendance as a juror.

Ordered that J. E. Dubuisson, be excused from further attendance as a juror.

Ordered that Walker Anderson, be excused from further attendance as a juror.

Ordered that the Marshal do forthwith summon from the bystanders fifteen persons qualified, to attend at 3 o'clock P. M. this day, to act as petit jurors at this term of this Court.

At said time the Marshal made his return, and the persons so summoned were called, and answered as follows: 1. William M. Johnson, 2. George W. Bonifay, 3. J. C. Dody, 4. William Totford, 5. Michael Puhtell, 6. A. Booske, 7. T. V. Kessler, 8. T. D. Quigles, 9. S. A. Johnson, 10. C. W. Gray, 11. Julius Boley, 12. F. E. Brawner, 13. H. G. De Silva, 14. Bleeker Forbes, 15. John Oliver, who were found qualified as jurors and accepted as such, as were all the other jurors so called, except those excused as above set forth.

Minute Book "G," page- 27-28.

162 It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the thirteenth day of November, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the fourteenth day of November, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

To the Honorable Charles Swayne, Judge of said Court:

The Grand Jurors empaneled at the fall term of the United States Circuit Court for the Northern District of Florida, beg leave to submit that they have diligently inquired into all matters brought to their attention.

That they have investigated thirty-one cases, returning true bills in twenty-three (23) of such cases, and no bills in eight (8) cases.

The Grand Jury begs leave to call to the attention of the Court the fact that Commissioners in some cases have brought before the body cases which appear to have no standing in Court, and also have in some cases failed to bind over witnesses or furnish this body with copies of testimony adduced before them at the commitment trials, and the Grand Jury suggests that in future more care should be exercised in these particulars.

The Grand Jury would further recommend that more commodious quarters be furnished for the use of future Grand Juries, the present

Minute Book "G," page 28.

163 quarters being entirely too small for their accommodation or comfort.

We desire to express our appreciation of the many acts of courtesy on the part of all Court officials and officers of this Court.

And having completed our investigation of all matters presented to us, beg to be discharged.

November 14, 1907.

Respectfully, L. M. DAVIS, *Foreman.*

LEE DANIELL, *Clerk.*

Ordered that a certified copy of this presentment be furnished the Custodian of this public building in which the Court is held.

Ordered that the Grand Jury be finally discharged.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the fifteenth day of November, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the sixteenth day of November, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the seventeenth day of November, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

Minute Book "G," page 29.

164 It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the nineteenth day of November, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twentieth day of November, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Case No. 1.

THE JACKSON LUMBER COMPANY, Complainant,
vs.
CHARLES F. TURNER, Respondent.

This cause coming on to be heard upon the exceptions of said Complainant to the answer of said Respondent, and the said parties being represented by Counsel, and it appearing that the Counsel for the Respondent objects to the hearing of said exceptions because of lack of an order being written in the Chancery Order book, setting down said exceptions for hearing: and the Counsel for Complainant announces that he desires leave of Court to write said order, setting down said exceptions for hearing, and the Court being advised of its opinion.

It is hereby ordered that said Complainant be granted leave to

Minute Book "G," page 30.

165 write the said order in the Chancery order book, and that the hearing of the exceptions in the case be, and is hereby postponed until Monday, November 19, 1906.

Done and ordered this 7 day of November, A. D. 1906, at Pensacola, Fla.

CHAS. SWAYNE, *Judge.*

Case No. 2.

THE JACKSON LUMBER COMPANY, Complainant,
vs.
CHARLES F. TURNER, Respondent.

This cause coming on to be heard upon the exceptions of said complainant, to the answer of said respondent, and the said parties being represented by Counsel, and it appearing that the said Counsel for the respondent objects to the hearing of said exceptions because of lack of an order being written in the Chancery order book, setting down said exceptions for hearing, and the Counsel for Complainant announces that he desires leave of Court to write said order, setting down said exceptions for hearing, and the Court being advised of its opinion:

It is hereby ordered that said Complainant be granted leave to write the said order in the Chancery order book, and that the hearing of the said exceptions in the case be, and is hereby postponed until Monday, November 19, A. D. 1906.

Done and ordered this 7 day of November, A. D. 1906, at Pensacola, Fla.

CHAS. SWAYNE, *Judge.*

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-first day of November, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G," page 31.

166 At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty second day of November A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-third day of November A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-fourth day of November A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

Ordered that the Marshal summon from the by-standers twenty persons qualified to serve as petit jurors, returnable Monday morning next at 10 o'clock, when they shall appear as summoned.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-sixth day of November A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

Minute Book "G" page 31.

167 The Marshal returned to the Court the names of those summoned as special veniremen under the order of this Court of the 24th inst.

Thereupon said names were called, and the following persons answered: 1. Frank Wilde, 2. W. L. Morgan, 3. A. McD. Moyer, 4. George Vucovich, 5. Frank Benjamin, 6. Ralph Gundersheimer, 7. Henry Horsler, 8. M. M. Lewey, 9. John Sunday, 10. C. L. White, 11. M. E. Clark, 12. C. F. Schad, 13. Victor Holst, 14. H. S. Forbes, 15. George Clutter, 16. W. T. Williams, 17. C. T. Levy, 18. Frank Creamer, 19. Henry Muller, 20. J. A. Johnson.

Ordered that W. L. Morgan be excused from attendance on excuse submitted.

Ordered that A. McD. Moyer be excused from attendance on excuse submitted.

Ordered that George Vucovich be excused from attendance on excuse submitted.

Ordered that Ralph Gundersheimer be excused from attendance on excuse submitted.

Ordered that George Clutter be excused from attendance on excuse submitted.

Ordered that Henry Miller be excused from attendance on excuse submitted.

The balance of said jurors were found qualified and accepted.

FREDERICK W. HAWARD
vs.
EVANS-MALLOY CO. et al.

Bill of Injunction and to Cancel Tax Deeds.

This cause came on to be heard for a temporary restraining order, on bill filed and sworn to, to enjoin the defendants in said cause from chipping the trees, gathering and removing the turpentine, and from cutting and removing the trees and timber on the lands herein-after described, and was argued by Counsel, etc.,

It is ordered, adjudged and decreed by this Court that the said defendants, R. C. Evans, J. H. Malloy, and D. G. Malloy, partners using the firm name of Evans-Malloy Co., Malloy-Murphy Company, a corporation, W. G. Sheffield, J. M. Sheiffield, John T. Wilson, A. R. Denmark and R. R. Slaughter, be and they are each and every one of them, their agents, servants and employees, *are* hereby enjoined from chipping the trees, removing the turpentine, and cutting down the trees and removing the timber on the following lands, to-wit:—The north-west quarter of the north-east quarter, the north-east quarter of the north-west quarter, and the south-west quarter of the north-west quarter of Section thirty-five (35), the south-east

Minute Book "G" page 32.

168 quarter of the south-west quarter of Section thirty-six in Township two (2) South of Range six (6) East, until the further order of this Court.

It is further ordered, adjudged and decreed, that the said Complainant, Frederick W. Haward, execute a bond in the sum of Five hundred dollars, within thirty days from this date, in terms of law, to the said defendants, to secure them against any loss by reason of the improperly issuing of said order: said bond to be approved by F. W. Marsh, Clerk of the Circuit Court of the United States for the Northern District of Florida.

Done and ordered at Chambers in Pensacola, Florida, this 26th day of November, A. D. 1906.

CHAS. SWAYNE, *Judge.*

It was ordered that Court adjourn until to morrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-seventh day of November A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

RAYMOND CAY
vs.
W. C. VEREAN and COAST CYPRESS AND RAILROAD COMPANY.

In pursuance of the order of this Court, and of a præcipe by Counsel for Complainant to that effect, filed, it is now ordered that this cause be and the same is hereby dismissed as to the Coast Cypress and Railroad Company, without prejudice.

Done at 12 o'clock noon, November 27th, A. D. 1906.

F. W. MARSH, *Clerk.*

Minute Book "G" page 33.

169 RAYMOND CAY
vs.
COAST CYPRESS & RAILROAD COMPANY.

This cause coming on to be heard upon the sworn bill of complaint, and the application of the solicitors for the complainant for a restraining order until an application for an interlocutory injunction can be heard, and it appearing to the Court that the said restraining order should be granted:

Now, therefore, it is ordered that the defendant, the Coast Cypress & Railroad Company, be and is hereby restrained, until the further order of this Court, from selling or from cutting any logs or timber from the lands bought by the defendant from the complainant in pursuance of and under contract made between them on November 5th 1902, for the sale and conveyance of lands in the Counties of Jefferson and Wakulla, in the State of Florida, and from selling and cutting logs or timber from any of the lands belonging to defendant on the said 5th day of November 1902, in the Counties of Wakulla, Leon and Jefferson:

The said lands being fully described in the exhibits attached to the bill of complaint in this cause.

This restraining order shall be operative immediately upon the signing hereof, but shall be vacated if the complainant shall not, on or before the 15th day of December, 1906, file with the Clerk of this Court a bond, with good and sufficient surety, and approved by said Clerk, in the sum of Five Thousand ($5,000.00) Dollars, conditioned to pay to the defendant such damages as it may sustain by reason of the issuance of this restraining order, if the said restraining order be dissolved.

It is further ordered that the application for an interlocutory injunction in this cause, continuing, or in lieu of this restraining order, be heard before this Court at the Court House in the City of Pensacola, on the said 15th day of December, 1906, at 10 o'clock A. M., or as soon thereafter as the same can be heard, and that due notice of the time and place of said hearing be given to the defendant, or its solicitors.

Done in the City of Pensacola, this 27th day of November, A. D. 1906.

CHAS. SWAYNE, *Judge.*

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G" page 34.

170 At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-eighth day of November A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twenty-nine day of November A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the thirtieth day of November A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the first day of December A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G" page 35.

171 At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the third day of December A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacloa on the fourth day of December A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the fifth day of December A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the sixth day of December A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

Minute Book "G" page 35.

172 At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the seventh day of December A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the eighth day of December A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the tenth day of December A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

Upon motion of William B. Sheppard Esq., and upon exhibition of a certificare under the hand of the Clerk of Southern District of Georgia, Young L. Watson, and the Clerk U. S. Courts District of Indiana, William R. Hause, were each shown to be members of the United States Courts for said Districts, they were permitted to take the oath prescribed, and were thereupon admitted to the bar of this Court.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a Stated Term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the eleventh day of December A. D. 1906—present, the Honorable Charles Swayne judge—among the proceedings had were the following, to wit:

Minute Book "G" page 36.

173 Law. No. 101.

THE UNITED STATES
vs.
THE PENSACOLA LUMBER COMPANY, a Corporation.

Damages, $800.00.

Conversion.

Came the parties to this cause, and having agreed upon a settlement of this cause, they consented in open Court to the entry of final judgment herein in the sum of Four Hundred Dollars.

Whereupon, it is considered, ordered and adjudged by the Court that the plaintiff, the United States, have and recover from the defendant, The Pensacola Lumber Company, a corporation under the laws of the State of Florida, the sum of Four Hundred ($400.00) Dollars, and that the plaintiff, the United States, have execution thereon.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the twelfth day of December, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the thirteenth day of December, A. D. 1906—present, the Honorable —— ——, judge—among the proceedings had were the following, to-wit:

THE FLORIDA PINE LUMBER COMPANY, a Corporation,
vs.
E. T. DAVIS, AUGUSTUS J. FENN, FRANK HARRELL, and M. I. HARRELL, Respondents.

This cause coming on to be heard upon application of complain-

Minute Book "G," page 37.

174 ant for an interlocutory injunction, as prayed for, and the same having been considered by the Court:

It is ordered that the said defendants, Frank Harrell and M. I. Harrell their agents and employees be, and they are hereby enjoined and restrained until the further order of this Court, from entering upon, cutting or removing any saw mill timber, or any timber already cut, upon Sections three, four, five, eight and nine (3, 4, 5, 8 and 9) of Township Two (2) South of Range One (1) East, according to the McIver survey of the *of the* Forbes Purchase, being the same Sectional numbers in Township Two (2), South Range Six (6) West, of the United States Survey: The West half of Section Twenty-seven (27), All of Section- Twenty-eight, Thirty-one, Thirty-two, Thirty-three and Thirty-four, (28-31-32-33 and 34), Township One (1), South Range One (1) East, according to McIver's Survey of the Forbes Purchase, being the same Sectional numbers in Township One (1) South Range Six (6) West, of the United States Survey, or from any part thereof.

Thus done and ordered at Pensacola, this 13th day of December, A. D. 1906.

CHAS. SWAYNE, *Judge.*

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the fourteenth day of December, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

THE JACKSON LUMBER CO., Complainant,
vs.
CHARLES F. TURNER, Respondent.

Taxes for 1904. Case No. 1.

This cause coming on to be heard upon exceptions to the answer of Respondent in the above entitled cause, the respective parties being represented by counsel, and after hearing the arguments of Counsel for the respective parties, the Court being advised of its opinion;

It is hereby ordered, adjudged and decreed, that the exceptions

Minute Book G, page 38.

175 to said answer be, and the same are hereby denied, with leave for the complainant to file such other pleadings as he may be advised, on or before the rule day in January, 1907.

Done and ordered this 14th day of December, A. D. 1906, at Pensacola, Florida.

CHAS. SWAYNE, *Judge.*

THE JACKSON LUMBER CO., Complainant,
vs.
CHARLES F. TURNER, Respondent.

Taxes for 1905. Case No. 2.

This cause coming on to be heard upon exceptions to the answer of Respondent in the above entitled cause, the respective parties being represented by Counsel, and after hearing the arguments of Counsel for the respective parties, the Court being advised of its opinion.

It is hereby ordered, adjudged and decreed that the exceptions to said Answer be, and the same are hereby denied, with leave for the Complainant to file such other pleadings as he may be advised on or before the rule day in January, 1907.

Done and ordered this 14th day of December, A. D. 1906, at Pensacola, Florida.

CHAS. SWAYNE, *Judge.*

THE J. J. MCCASKILL COMPANY, Plaintiff,
vs.
JAMES DIXON, Defendant.

This cause coming on to be heard upon the petition of the said plaintiff for an order of sale of the logs and timber attached under and by virtue of the writ of attachment herein issued, which consists of one thousand (1000) pieces of square timber and fifty-two (52) pine logs, as is particularly described by the return of the Marshal of this Court on the writ of attachment, and the counsel for the said defendant having on the 14th day of November, A. D. 1906, requested the suspension of the hearing upon said application until he could communicate with said defendant for the purpose of giving bond, which he, L. J. Reeves, as counsel, stated he expected said defendant to give, and he, L. J. Reeves, as counsel for said defendant, having stated to the Court on the 14th day of December, 1906, that the said defendant had decided not to give the bond for the forth-coming of said property, the Court being advised of its opinion.

It is hereby ordered and adjudged that the Marshal of this Court, after having given ten (10) days' notice of sale, shall sell all of said

Minute Book "G," page 39.

176 property attached under and by virtue of said writ of attachment, and shall make sale of the same where the said property is now located, to-wit:—at —— boom, near the mouth of the Choctawhatchee River, in Walton County, Florida, and make due report of the sale thereof to this court as expeditiously as possible.

Done and ordered this 14th day of December, A. D. 1906, at Pensacola, Florida.

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the fifteenth day of December, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

It was ordered that Court adjourn until tomorrow morning at 10 o'clock.

At a stated term of the Circuit Court of the United States within and for the Northern District of Florida, begun and held at the City of Pensacola on the seventeenth day of December, A. D. 1906—present, the Honorable Charles Swayne, judge—among the proceedings had were the following, to wit:

Minute Book "G," page 39.

EXHIBIT "C."

Criminal Docket, November Term, A. D. 1906.

United States Circuit Court, Northern District of Florida, at Pensacola.

No.	Title of cause.	Proceedings in cause.	References to records, etc.
590.	The United States *vs.* W. S. Harlan, Robert Gallagher, Oscar Sandor, E. Newlander, C. C. Hilton, Jeff S. Howell, John Atwell, W. E. Grace, S. E. Huggins, Archie Bellinger, Harry Halverson, one Angelo, one Lameter.	Ind. Vio. Sec. 5440, 5526 R. S. Date of filing, Nov. 10. Nol. pros. as to J. S. Howell, Nov. 27. Date of plea, Nov. 27 N. G. Cause severed as to Hilton, Huggins & Atwell & Angelo. Trial, Nov. 27, Verdict, Dec. 8. Guilty as to Gallagher, Sandor & Grace, not as to others. Sentence, Dec. 14. Gallagher 15 mos. & $1000 fine. Grace 13 " " " " Sandor 13 " " " " B. W. ordered. Bail each $1000.00. Demurrer overruled Nov. 14. Motion to strike refused Nov. 14. Jury ordered fed Nov. 27.	Page-Minute Book, 343-349, also "D" 43-44. Nov. 13, Bond for Halverson, Le Maister & Hilton, & Newlander. Bond Def. Howell Nov. 10. Page Final Record Book. Bond, Def. Atwell Nov. 10. Bond Def. Bellinger 13. Mesne Writs issued. B. W. Nov. 10. Witness warrant Nov. 8, 1906, & order. Final Writs issued. No. witnesses sworn 31+5. Wds. Jl. Ent. Wds. Fin. Rec. 9802 Dec. 22. Total Clerk's Fees. Sw. U. S. Atty. to Demurrer 8 fl. & fil. motion Nov. 27. Extras, Copy Ind. De. Nov. 10.

Endorsed: Daily entry 134 words.

Pleas of former conviction by Harlan. Demurrer to same sustained & motion to strike *over* act mentioned therefrom. Indictment sustained Nov. 27.

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Parties.	Witness- for U. S.	Remarks—Data.
The United States of America v. Jno. W. Hawkins. Violation 5392. Perjury.	A. Paul. Sam Curry. Wm. Curry. H. M. Hewitt. J. A. J. Hathaway.	True bill. Nov. 7, 1906.
The United States of America v. Jno. G. Ward. Violation Sec. 3242 R. S. U. S.	Charley Ward. Jno. G. Ward, Jr. Geo. Miller.	Nov. 8, 1906. No bill.
The United States of America v. Geo. Miller. Violation Sec. 3258 R. S. U. S.	John Silcox.	Nov. 7th, 1906. No bill.
The United States of America v. Ras. Holly. Violation Sec. 3258 R. S. U. S.	R. P. Wharton. Frank Terry.	True bill. Nov. 7, 1906.
The United States of America v. Henry H. Edwards. Violation Sec. 3258 R. S. U. S.	F. G. Taylor. J. W. Barnes. Geo. W. Johnson.	True bill. Nov. 8, 1906.

179 32 Grand Jury Assignments, ——, 189-.

The United States of America v. Wiley Adams. Violation Section 3258 R. S. U. S.	F. G. Taylor. J. W. Barnes. Geo. W. Johnson. J. N. Williams. W. B. Miller.	Nov. 9. No true bill.
The United States of America v. J. M. Bass. Violation Section 3258 R. S. U. S.		

Parties.	Witnesses for U. S.	Remarks - Data.
The United States of America v. Robert Gallagher, Walter E. Grace, Oscar Sander. Peonage. Violation Sec- 1990 & 2556 R. S. U. S.	Louis Friedman, Interpreter. Fredick Milraly. E. E. Reese. W. N. Craig. Miss M. J. Paul. Mrs.ElizabethGibson. Hardy Davis. J. B. Barlow. J. W. Swilley.	Nov. 7, 1906. A true bill. Nov. 10/06.
The United States of America vs.	James Johnson. Chas. Menneke. William Keller. Louis Abraham. Jno. Smith. Jno. Davis. Albert Danish. Herman Osmenaski. Laura Howell. Jno. Buford.	
The United States of America vs.	Lizzie Brooks. Sterling Johnson. J. R. Foster. Chas. Haas. J. C. Satterwhite. Nathan Scott. RudolphLamminger. S. E. Huggins. F. L. Mays. Geo. Jordmans.	

180 Grand Jury Assignments, ——. 33

The United States of America vs.	William Albert. Jno. Atwell. H. M. Stokes. Henry Atwell. J. L. Rhodes. Jno. Merrill. G. W. Herdson. David Clarey. Mrs. J. B. Saunders.	
The United States of America vs.	Jeb Howell. Sandor Syomolez.	

Parties.	Witnesses for U. S.	Remarks—Data.
The United States of America vs.		
The United States of America v. J. M. Tuggle. Violation Sec. 3891 R. S. U. S.	Jno. S. Alley. Jno. A. Maloy. W. M. Scott.	Nov. 9, 1906. True bill.
The United States of America v. Tom Bowden. Violation Sec. 3258 U. S. R. S.	G. W. Hudson.	Nov. 10/06. True bill.

181 34 Grand Jury Ssignments for —— 189–.

The United States of America v. W. S. Harlan, Oscar Sandor, S. E. Huggins, Jeb S. Howell, & C. C. Hilton. Violation Sects. 5440 & 5526 of the R. S. U. S.	Same witnesses as in case of U.S. against Oscar Sandor, Robert Gallagher, & Walter E. Grace.	A true bill. Nov. 10/06.
The United States of America v. W. S. Harban, Rob't Gallagher, Oscar Sandor, E. Newbarrder, C. C. Hilton, Jebb S. Howell, Jno. Atwell, Walter E. Grace, S. E. Huggins, Archie Bellinger, Harry Hargerson, one Angelo, one Lamater. Violation Secs. 5440 & 5526 R. S. U. S.	Same witnesses as in case of U.S. against OscarSandor, Rob't Gallagher, & Walter E. Grace.	A true bill. Nov. 10/06.
The United States of America v. C. C. Hilton, Jebb S. Howell, S. E. Huggins. Violation Sec. 5526 R. S U. S.	Same witnesses as in case of U.S. against OscarSandor, Rob't Gallagher, & Walter E. Grace.	A true bill. Nov. 10/06.

Parties.	Witness- for U. S.	Remarks—Data.
The United States of America v. Rob't Gallagher, Oscar Sandor, Jno. Atwell. Violation — 5526 R. S. U. S.	Same witnesses as in case of U. S. against Oscar Sandor, Rob't Gallagher, & Walter E. Grace.	A true bill. Nov. 10/06.
The United States of America v. L. B. Edwards. Violation Section 3258 R. S. U. S.	J. R. Ware. F. R. Harper.	A true bill. Nov. 10/06.

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The United States of America v. H. B. Hoover. Violation Section 3258 R. S. U. S.	J. J. Ward. Witnesses — affiants who made affidavits do not appear before Com'r. Brady Ward. C. M. Cox.	A true bill. Nov. 10/06.
The United States of America v. J. M. Bass. Violation Section 3258 U. S. R. S.	J. R. Ware. G. M. Johnson.	No true bill. Nov. 10/06.
The United States of America v. W. P. Brownell. Violation Section 3258 R. S. U. S.	G. W. Hudson. J. D. Crews.	A true bill. Nov. 10/06.
The United States of America v. E. L. Vickers, W. H. Lassiter, David Hobby, Sam Lewis, Irvin Easter.	M. J. Dupree. A. Paul. Robert Melton. Bob Bryant. Jno. Judge.	Nov. 12, 1906. A true bill.
The United States of America v. W. S. Harlan, S. E. Huggins, Jeb S. Howell, C. C. Hilton. Violations Sections 5440 & 5526 R. S. U. S.	Same witnesses as in case of United States against Oscar Sandor, Rob't Gallagher, & Walter E. Grace.	Nov. 12/06. A true bill.

183 36 Grand Jury Assignments for ——, 189–.

Parties.	Witness for U. S.	Remarks—Data.
The United States of America v. W. S. Harlan, Robert Gallagher, Oscar Sandor, Jno. Atwell. Violations Sections 5440 & 5526 R. S. U. S.	Same witnesses as in case of United States vs. Oscar Sandor, Rob't Gallagher, & W. E. Grace.	Nov. 12/06. A true bill.
The United States of America v. Robert Henderson. Violation Section *Sec.* 5356 R. S. U. S.	D. T. McSwain. F. W. Marsh. A. J. Carvancejie.	Nov. 12/06. A true bill.
The United States of America v. C. M. Powell. Forgery.	J. D. Bailey. J. W. Barnes. Jno. Pfeiffer.	November 13, 1906. A true bill.
The United States of America v. Hogan Angus. Violation Section 3258 R. S. U. S.	W. D. Rigdon. Frank R. Harford. Mrs. S. C. Lassiter. J. D. Crews.	Nov. 12/06. A true bill.
The United States of America v. Johns, Tom W. Violation Section 3258 R. S. U. S.	Frank R. Harper. J. D. Crews.	Nov. 12/06. A true bill.

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The United States of America v. Oscar Wadkins, Tom Wadkins, Ed Porter, Bob Porter, —— Sykes. Violation Sections 5440 & 5526 R. S. U. S.	Willie Hartley. Ed Hartley. Will Crosby. J. L. Ball. W. W. Sharpless. Will Huntley. S.	Nov. 12/06. A true bill.

Parties.	Witness for U. S.	Remarks—Data.
The United States of America v. Hanson Kelly. Assault.	Walker Humphreys. Everett Smith. Ben Liddon. Joe J. Howell.	J. L. Long, a grand juror, announcing that he was a witness in this case, he was allowed to retire from the room during the consideration of the case. November 13, 1906. A true bill.
The United States of America v. J. W. Smith. Violation Section 3258 U. S. R. S.	Frank R. Harper. J. D. Crews. J. R. Ware.	November 13, 1906. No true bill.
The United States of America v. J. L. M. Williams, H. W. Ealum. Violation Section 3258 U. S. R. S.	J. D. Crews. Frank R. Harper. J. W. Barnes.	November 13, 1906. No true bill.
The United States of America v. Elisha Turner. Assault with intent to rape.	Adelle Tolliver. Alice Tolliver. Jessie Tolliver. Pearl Green. Scip Tolliver.	November 13, 1906. A true bill.

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The United States of America v. Ben McMillan, Math Hill. Violation Sections 5440 & 5526 R. S. U. S.	Mitchell Bell. Wilber Hawkins. Mike Davis. Gad Lewis. Fred Cobb.	Nov. 13/06. No true bill.
The United States of America v. Ed Campbell, Bird Cameron. Violations Sections 5440 & 5526 R. S. U. S.	Reuben Nooney. Francis Doyle.	November 14/06. No true bill.

Parties.	Witness for U. S.	Remarks—Data.
The United States of America v. C. D. Shiers. Violation Section 3258 R. S. U. S.	Frank R. Harford. G. W. Hudson.	November 14/06. A true bill.
The United States of America v. —— Smith, W. H. Goodwin. Violation Section 3242 R. S. U. S.	Dave Herring. J. L. M. Williams. Jno. Ealum.	November 14/06. A true bill.
The United States of America v.		

L. M. DAVIS,
Foreman.

LEE DANIELL, *Clerk.*

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EXHIBIT F.

TRANSCRIPT OF RECORD.

UNITED STATES
CIRCUIT COURT OF APPEALS
FIFTH CIRCUIT.

No. 1696

ROBERT GALLAGHER, ET AL.,
Plaintiffs in Error.

versus

THE UNITED STATES,
Defendant in Error.

Error to the United States Circuit Court for the Northern District of Florida.

[ORIGINAL RECORD FILED JUNE [illegible], 1907.]

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IN THE CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF FLORIDA.

THE UNITED STATES OF AMERICA

versus No. 590.

W. S. HARLAN, ROBERT GALLAGHER, OSCAR SANDOR, E. NEWLANDER, C. C. HILTON, JEBB S. HOWELL, JOHN ATWELL, WALTER E. GRACE, S. E. HUGGINS, ARCHIE BELLINGER, HARRY HALVERSON, ONE ANGELO AND ONE LAMATER, ALIAS LAMEATER, WHOSE CHRISTIAN NAMES, OTHER THAN GIVEN, ARE UNKNOWN.

Indictment for Violation Section 5440 Revised Statutes of the United States.

BE IT REMEMBERED, That on the twelfth day of November, in the year of our Lord, one thousand, nine hundred and six, a grand jury, duly empaneled and sworn in said United States Circuit Court, for the Northern District of Florida, did return into said Court an indictment against the several defendants above set forth, which indictment, with the indorsements thereon, is in the words and figures following, to-wit:

2 United States of America,
Northern District of Florida. ss.

In the Circuit Court of the United States, Within and for the District Aforesaid.

At the March adjourned term of said Court, in the year of our Lord, one thousand nine hundred and six, begun and held at the City of Pensacola, within and for the district aforesaid, on the seventh day of November, in the year of our Lord, one thousand, nine hundred and six.

The grand jurors of the United States of America, empaneled and sworn within and for the district aforesaid, on their oaths present; that one W. S. Harlan, one Robert Gallagher, one Oscar Sandor, one E. Newlander, one C. C. Hilton, one Jeb S. Howell, one John Atwell, one Walter E. Grace, one S. E. Huggins, one Archie Bellinger, one Harry Halverson, one Angelo, and one Lamater, alias Lameater, whose Christian names, other than as given as above are to the grand jurors unknown, heretofore, to-wit: on the nineteenth day of July, in the year of our Lord, one thousand, nine hundred and six, in the County of Walton, State of Florida, within the district aforesaid and within the jurisdiction of this Court, did then and there falsely, unlawfully and wickedly conspire, combine, confederate and agree together and among themselves to commit an offense against the laws of the United States; that is to say, to arrest, to return divers persons, to the grand jurors unknown, who had been, before the time aforesaid, in the employ and were indebted to, or alleged to be indebted to the Jackson Lumber Company, a corporation, and who had quitted the employment aforesaid, while in debt to, or alleged to be in debt to the said Jackson Lumber Company, with intent then and there to arrest and return the said divers persons to the grand jurors unknown, who had been, before the time aforesaid, in the employ and were indebted to or alleged to be indebted to the said Jackson Lumber Company, to a condition of peonage, with intent then and there to compel them, and each of them, the said divers persons to the grand jurors unknown, who had been, before the time aforesaid, in the employ and were indebted to, or alleged to be indebted to the said Jackson Lumber Company, to work for the said Jackson Lumber Company, a corporation as aforesaid, to be held by it, the said Jackson Lumber Company, a corporation, to work out a debt claimed to be due to the said Jackson Lumber Company by the said divers persons to the grand jurors unknown.

3 And afterwards, to-wit: on the nineteenth day of July, in the year of our Lord, one thousand, nine hundred and six, in pursuance of, and for the purpose of effecting the object of the said conspiracy, the said Robert Gallagher, the said Walter E. Grace and the said Oscar Sandor, did; by threats and force, within the district aforesaid, and within the jurisdiction of said Court, to-wit: in the County of Walton, State of Florida, arrest one Trudics Mihaly, alias Trudich Mihaly, who had been, before the time aforesaid, in the employ and was indebted to, or alleged to be indebted to the Jackson Lumer Company, a corporation, and who had quitted the employment aforesaid, while in debt to, or alleged to be in debt to the said Jackson Lumber Company, and re-

strained him of his liberty, against his will and consent, and compelled him, the said Trudics Mihaly, alias Trudich Mihaly, to accompany them, the said Robert Gallagher, the said Walter E. Grace, the said Oscar Sandor to the place of business of the said Jackson Lumber Company, and did then and there wound, beat and ill treat the said Trudics Mihaly, alias Trudich Mihaly, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

And afterwards, to-wit: on the twenty-first day of July, in the year of our Lord, one thousand, nine hundred and six, in pursuance of, and for the purpose of effecting the object of the said conspiracy, the said Robert Gallagher, the said Oscar Sandor, and the said John Atwell, did by threats and force, within the district aforesaid, and within the jurisdiction of this Court, to-wit: in the County of Walton, State of Florida, arrest one John Doe, the said name John Doe, being fictitious, the real name of the said person being to the grand jurors unknown, and which could not by them be ascertained, but who is a person of foreign birth and nationality, a young man, with a smooth face, light complexion, being about five feet ten inches high, and weighing about one hundred and thirty pounds, and one Richard Roe, the said name Richard Roe being fictitious, the real name of the said persons being to the grand jurors unknown, and which could not be by them ascertained, but who is a person of foreign birth and nationality, and being a middle aged man, with a large frame, and wearing a red beard, each of whom had been, before the time aforesaid in the employ and was indebted to, or alleged to be indebted to the Jackson Lumber Company, a corporation, and who had quitted the employment aforesaid while in debt to, or alleged to be in debt to the said Jackson Lumber Company, and restrained them of their liberty, against their will and consent, and compelled them, the said John Doe and the said Richard Roe, to accompany them the said Robert Gallagher, Oscar Sandor and John Atwell to the place of business of the said Jackson Lumber Company, contrary 4 to the form of the statute in such case made and provided and against the peace and dignity of the United States.

And afterwards, to-wit on the twenty-fourth day of July, in the year of our Lord, one thousand, nine hundred and six, in pursuance of, and for the purpose of effecting the object of the said conspiracy, the said C. C. Hilton, the said Jeb S. Howell and the said S. E. Huggins, did, by threats and force within the district aforesaid, and within the jurisdiction of this Court, to-wit: in the County of Walton, State of Florida, arrest one Rudolf Lanninger, who had been before the time aforesaid, in the employ and was indebted to, or alleged to be indebted to the Jackson Lumber Company, a corporation, and who had quitted the employment aforesaid, while in debt to, or alleged to be in debt to the said Jackson Lumber Company, and restrained him of his liberty, against his will and consent, and compelled him, the said Rudolph Lanninger to accompany them, the said C. C. Hilton, Jebb S. Howell and S. E. Huggins, to the place of business of the said Jackson Lumber Company, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

L. M. DAVIS,
Foreman of the Grand Jury.
WILLIAM B. SHEPPARD,
United States Attorney.

(Indorsed:) No. 590. The United States vs. W. S. Harlan, Robert Gallagher, Oscar Sandor, E. Newlander, C. C. Hilton, Jebb S. Howell, John Atwell, Walter E. Grace, S. E. Huggins, Archie Bellinger, Harry Halverson, one Angelo, one Lamater. A True Bill. L. M. Davis, Foreman of Grand Jury. Filed Novemer 10th, A. D. 1906. F. W. Marsh, Clerk. Indictment, Violation Sections 5440-5526, R. S. U. S. William B. Sheppard, United States Attorney.

(Indorsed further:) This indictment was returned against on November 12, 1906. F. W. Marsh, Clerk.

(Indorsed further:) Waiving arraignment, defendants W. S. Harlan, Robt. Gallagher, Oscar Sandor, E. Newlander, Walter E. Grace, Archie Bellinger, Harry Halverson and one John LaMaister plead "Not guilty" to this indictment. This Nov. 27, 1906. Blount & Blount, Scott M. Loftin, Maxwell & Reeves, Wm. W. Flournoy, Attys. for Defs. Dated November 27, 1906.

And afterwards, on the same day, there issued out of the said Court a bench warrant for the arrest of the said several defendants, which bench warrant, together with the indorsements and return thereof, is in the words and figures following, to-wit:

5 In the Circuit Court of the United States, Fifth Judicial Circuit, Northern District of Florida.

The President of the United States of America,

To the Marshal of the Northern District of Florida—Greeting:

You are hereby commanded to arrest W. S. Harlan, E. Newlander, John Atwell, Archie Bellinger, Harry Halverson, one Angleo and one Lamater, alias Lameater, if they be found in your district, and them safely keep so that you have their bodies before the judges of the Circuit Court of the United States for the Northern District of Florida, at the courtroom in the City of Pensacola, in said district, to answer to the said United States of America upon an indictment for a violation of Section 5440 of the Revised Statutes of the United States in that he [they] did heretofore within the district aforesaid, and within the jurisdiction of said Court falsely, unlawfully and wickedly conspire, combine, confederate and agree together and among themselves and with divers other persons to commit an offense against the laws of the United States, that is to say to hold, arrest and return certain persons to a condition of peonage, and that thereafter, the said persons did, in pursuance of, and for the purpose of effecting the object of said conspiracy, commit an overt act, specifically set forth in said indictment, which is numbered .... and is still pending against them in said Court, and have you then and there this writ with your return indorsed thereon.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of this Court at the City of Pensacola, in said district, this the 10 day of November, in the year of our Lord one thousand nine hundred and six.

[Seal] F. W. MARSH, Clerk.

(Indorsed:) No. 590. The United States vs. W. S. Harlan et al. Bench Warrant. Issued Nov. 10, 1906. Filed Dec. 17, 1906. F. W. Marsh, Clerk.

Marshal's Return.

Received the within bench warrant at Pensacola, Florida, on the 10th day of November, A. D. 1906, and executed the same on the 10th day of and 13th day of November, A. D. 1906, at Pensacola, by arresting the defendants and have his (their) body now in Court, except Angelo, who could not be found.

T. F. McGOURIN,
U. S. Marshal.
Per R. P. WHARTON,
Deputy Marshal.

Filed Dec. 17, 1906.
F. W. MARSH, Clerk.

6 And afterwards, upon the 13th day of November, A. D. 1906, came the defendants, by their attorneys, and filed in the office of the clerk of said Court, a motion to strike the said indictment, which motion is in the words and figures following, to-wit: the said motion upon the following day being denied by the Court.

United States of America,
Northern District of Florida.

United States
vs. No. 590.
W. S. Harlan, Robert Gallagher, Oscar Sandor, E. Newlander, C. O. Hilton, J. S. Howell, John Atwell, Walter E. Grace, S. E. Huggins, Archie Bellinger, Harry Halverson, one Angelo, one Lameter, alias Lameater.

Now comes the defendants in their own proper person and by their attorneys, W. W. Flournoy, Blount & Blount and Scott M. Loftin, and move the Court to strike and expunge from the indictment herein the words "or alleged to be indebted to the Jackson Lumber Company, a corporation," and also the allegation, "and did then and there wound, beat and ill-treat the said Trudics Mihaly, alias Trudich Mihaly," wherever and whenever they appear in said indictment:

1. Because said allegations are immaterial, irrelevant and surplusage.

2. Because said allegation is pleaded in the disjunctive.

3. Because said allegations tend to embarrass defendants in the preparation of their defense, and will prejudice the mind of the jury on the trial of the case.

WM. W. FLOURNOY,
BLOUNT & BLOUNT,
SCOTT M. LOFTIN,
Attorneys for Defendants.

(Indorsed:) No. 590. United States vs. W. S. Harlan, Robert Gallagher, Oscar Sandor, E. Newlander, C. C. Hilton, J. S. Howell, John Atwell, Walter E. Grace, S. E. Huggins, Archie Bellinger, Harry Halverson, one Angelo, one Lameter, alias Lameater. Motion to Strike. Filed Nov. 13, 1906. F. W. Marsh, Clerk. W. W. Flournoy, Blount & Blount, Scott M. Loftin, Attys. for Defdts.

And upon the same day, to-wit: the 13th day of November, A. D. 1906, was filed with the clerk of said Court, the demurrer of the said defendants to the indictment, which demurrer is in the words and figures following, to-wit: which demurrer was upon the following day argued by counsel, and overruled and denied by the Court.

7 United States of America,
Northern District of Florida.

United States
vs. No. 590.
W. S. Harlan, Robert Gallagher, Oscar Sandor, E. Newlander, C. C. Hilton, Jeb S. Howell, John Atwell, Walter E. Grace, S. E. Huggins, Archie Bellinger, Harry Halverson, one Angelo, one Lameter, alias Lameater.

Now comes the defendants in their own proper persons and by their attorneys, W. W. Flournoy, Blount & Blount and Scott M. Loftin, and demur to the indictment herein, and for grounds of demurrer say:

1. That said indictment is vague, indefinite and uncertain.

2. Because it charges no offense against the laws of the United States.

3. Because it charges no offense over which this Court has jurisdiction.

4. Because it charges a conspiracy to commit three separate and distinct offenses.

5. Because certain material allegations are pleaded in the disjunctive, to-wit: the persons alleged to be the objects of the conspiracy are stated to be indebted to, or alleged to be indebted to the Jackson Lumber Company.

6. Because the allegations that the said persons are alleged to be indebted to the Jackson Lumber Company, are immaterial, irrelevant and surplusage.

7. Because it is alleged that said persons were to be held to work out a debt claimed to be due to the Jackson Lumber Company.

8. Because the allegation that Mihaly was wounded, beaten and ill-treated is immaterial, irrelevant and surplusage, and tends to embarrass the defendants in the preparation of their defense, and prejudice the minds of the jury.

WM. W. FLOURNOY,
BLOUNT & BLOUNT,
SCOTT H. LOFTIN,
Attorneys for Defendants.

(Indorsed:) No. 590. United States vs. W. S. Harlan, Robert Gallagher, Oscar Sandor, E. Newlander, C. C. Hilton, J. S. Howell, John Atwell, Walter E. Grace, S. E. Huggins, Archie Bellinger, Harry Halverson, one Angelo, one Lameter, alias Lameater. Demurrer. Filed Nov. 13, 1906. F. W. Marsh, Clerk. Wm. W. Flournoy, Blount & Blount, Scott M. Loftin, Attys. for Defdts.

And afterwards, to-wit: upon the 27th day of November, A. D. 1906, came the defendant W. S. Harlan, and by his attorneys, filed in the office of the clerk of said Court his plea auter convict, which is in the words and figures following, to-wit: and which was declared by the Court bad in law, and of no avail as a defense in said indictment.

8 In the United States District (Circuit) Court, Northern District of Florida.

United States of America
vs. Conspiracy.
W. S. Harlan, et al.

Now comes W. S. Harlan, one of the defendants in the above stated case into open Court and having heard the said indictment read and protesting that he was not guilty of the premises charged in the said indictment, says, that the United States ought not further to prosecute the said indictment against him, the said W. S. Harlan because he says that heretofore, to-wit: at the District (Circuit) Court of the United States in and for the Northern District of Florida at the March adjourned term of said Court in the year of our Lord one thousand nine hundred and six, begun and held in the City of Pensacola within and for the district aforesaid on the 7th day of November in the year of our Lord one thousand nine hundred and six, the grand jurors of the United States of America, empaneled and sworn within and for the district aforesaid on their oath's did present as follows:

"United States of America,
Northern District of Florida. ss.

In the Circuit Court of the United States, Within and for the District Aforesaid.

At the March adjourned term of said Court, in the year of our Lord, one thousand, nine hundred and six, begun and held at the City of Pensacola, within and the district aforesaid, on the twelfth day of November, in the year of our Lord, one thousand, nine hundred and six.

The grand jurors of the United States of America, empaneled and sworn, within and for the district aforesaid, on their oaths present: that one W. S. Harlan, one S. E. Huggins, one Jeb S. Howell, one C. C. Hilton, heretofore, to-wit: on the twenty-fourth day of July, in the year of our Lord, one thousand, nine hundred and six, in the County of Walton, State of Florida, within the district aforesaid, and within the jurisdiction of this Court, did then and there falsely, unlawfully and wickedly, conspire, combine, confederate and agree together and among themselves to commit an offense against the laws of the United States, that is to say: to arrest one

Rudolph Lanninger with intent that he should be returned to a condition of peonage, that is to say: to the compulsory service of the Jackson Lumber Company, a corporation, in working out an indebtedness alleged to be due by him to that company:

9 And afterwards, to-wit: on the day aforesaid, in pursuance of, and for the purpose of effecting the object of the said conspiracy, the said C. C. Hilton, and the said Jeb S. Howell, did, by threats and force, within the district aforesaid, within Walton County, Florida, and within the jurisdiction of this Court, arrest the said Rudolf Lanninger, and restrain him of his liberty, against his will and consent.

And afterwards, to-wit, on the day aforesaid, in pursuance of, and for the purpose of effecting the object of said conspiracy, the said S. E. Huggins did compel him, the said Rudolf Lanninger, to accompany him, the said S. E. Huggins to the place of business of the said Jackson Lumber Company, a corporation.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

2. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that one W. S. Harlan, one S. E. Huggins, one Jeb S. Howell, one C. C. Hilton, heretofore, to-wit: on the twenty-fourth day of July, in the year of our Lord one thousand, nine hundred and six, in the County of Walton, State of Florida, within the district aforesaid, and within the jurisdiction of this Court, did then and there falsely, unlawfully and wickedly conspire, combine, confederate and agree together and among themselves to commit an offense against the laws of the United States, that is to say to arrest one Rudolf Lanninger, with the intent that he should be held in a condition of peonage, that is to say, a condition of compulsory service of the Jackson Lumber Company, a corporation, at its place of business, in working out an indebtedness alleged to be due to said company.

And afterwards, to-wit: on the day aforesaid, in pursuance of and for the purpose of effecting the object of the said conspiracy, the said C. C. Hilton and the said Jebb S. Howell did, by threats and force, within the district aforesaid, in the County of Walton, State of Florida, and within the jurisdiction of this Court, arrest the said Rudolf Lanninger, and restrain him of his liberty, against his will and consent.

And afterwards, to-wit: on the day aforesaid, in pursuance of and for the purpose of effecting the object of the said conspiracy, the said S. E. Huggins, in the County of Walton, State of Florida, within the district aforesaid, and within the jurisdiction of this Court, did compel him, the said Rudolf Lanninger, to accompany him the said S. E. Huggins towards the place of business of the said Jackson Lumber Company.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

L. M. DAVIS,
Foreman of the Grand Jury.
WILLIAM B. SHEPPARD,
United States Attorney.

10 (Indorsements:) No. 597 [590]. The United States vs. W. S. Harlan, S. E. Huggins, Jeb S. Howell,, C. C. Hilton. A True Bill. L. M. Davis, Foreman oi Grand Jur. Indictment, Violation Sections 5440 and 5526, R. S. U. S. Conspiracy to Commit Peonage. Filed November 15th, A. D. 1906. F. W. Marsh, Clerk. William B. Sheppard, United States Attorney.

That said Court had jurisdiction to try said cause and of this defendant and on the 14 day of November, 1906, during said term of said Court, the said W. S. Harlan, S. E. Huggins, Jeb S. Howell and C. C. Hilton entered pleas of not guilty to said indictment and the United States having joined issue upon the said pleas, the said W. S. Harlan, S. E. Huggins, Jeb S. Howell and C. C. Hilton were placed on trial upon said indictment; that thereafter on the 23 day of Nov., 1906, during said term the jury empaneled and sworn in said cause to try said issue, so joined as aforesaid returned the following verdict:

"We the jury find the defendants guilty as charged except as to one Jeb S. Howell, whom we find not guilty.

(Signed) R. B. SIMPSON, Foreman."

as by the record thereof in the said Court remaining more fully appears; which said judgment and conviction still remain in full force and effect and not in the least reversed or made void.

The said W. S. Harlan further says that he is one and the same person as indicted and convicted as aforesaid, and not other and different persons, and the said W. S. Harlan further says that the crime of conspiracy of which he was so indicted and convicted as aforesaid and the crime of conspiracy for which he is now indicted are one and the same crimes of conspiracy and not other and different crimes, and this the said W. S. Harlan is ready to verify, wherefore he prays judgment if the United States ought further to prosecute this indictment against him in respect to the said offense in the said indictment mentioned and that he may be dismissed and discharged from the same.

2. W. S. Harlan, one of the defendants in the above stated case for further plea to the indictment herein says that the United States ought not to further prosecute the said indictment against him, the said W. S. Harlan, because he says that heretofore, to-wit: at the District Court of the United States in and for the Northern District of Florida, at the March adjourned term of said Court, in the year of our Lord one thousand nine hundred and six, begun and held in the City of Pensacola, within and for the district aforesaid, on the 7th day of November, in the year of our Lord one thousand nine hundred and six, the grand jurors of the United States of America empanled and sworn within and for the district aforesaid on their oaths, did present, as follows:

11 "United States of America,
Northern District of Florida. ss.

In the Circuit Court of the United States, Within and for the District Aforesaid.

At the March adjourned term of said Court, in the year of our Lord, one thousand, nine hundred and six, begun and held at the City of Pensacola, within and the district aforesaid, on the twelfth day of November, in the year of our Lord, one thousand, nine hundred and six.

The grand jurors of the United States of America, empaneled and sworn within and for the district aforesaid, on their oaths present; that one W. S. Harlan, one S. E. Huggins, one Jeb S. Howell, one C. C. Hilton, heretofore, to-wit: on the twenty-fourth day of July, in the year of our Lord, one thousand, nine hundred and six, in the County of Walton, State of Florida, within the district aforesaid, and within the jurisdiction of this Court, did then and there falsely, unlawfully and wickedly, conspire, combine, confederate and agree together and among themselves to commit an offense against the laws of the United States, that is to say: to arrest one Rudolf Lanninger with intent that he should be returned to a condition of peonage, that is to say: to compulsory service of the Jackson Lumber Company, a corporation, in working out an indebtedness alleged to be due by him to that company.

And afterwards, to-wit: on the day aforesaid, in pursuance of, and for the purpose of effecting the object of the said conspiracy, the said C. C. Hilton and the said Jeb S. Howell, did, by threats and force, within the district aforesaid, within Walton County, Florida, and within the jurisdiction of this Court, arrest the said Rudolf Lanninger, and restrain him of his liberty, against his will and consent.

And afterwards, to-wit: on the day aforesaid, in pursuance of, and for the purpose of effecting the object of the said conspiracy, the said S. E. Huggins did compel, the said Rudolf Lanninger, to accompany him, the said S. E. Huggins to the place of business of the said Jackson Lumber Company, a corporation.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

2. And the grand jurors aforesaid, upon their oaths aforesaid, do further present that one W. S. Harlan, one S. E. Huggins, one Jeb S. Howell, one C. C. Hilton, heretofore, to-wit: on the twenty-fourth day of July, in the year of our Lord one thousand, nine hundred and six, in the County of Walton,
State of Florida, within the district aforesaid, and
12 within the jurisdiction of this Court, did then and
there falsely, unlawfully and wickedly conspire, combine, confederate and agree together and among themselves to commit an offense against the laws of the United States, that is to say to arrest one Rudolf Lanninger, with the intent that he should be held in a condition of peonage, that is to say: a condition of compulsory service of the Jackson Lumber Company, a corporation, at its place of business, in working out an indebtedness alleged to be due from him to the said company.

And afterwards, to-wit: on the day aforesaid, in pursuant of and for the purpose of effecting the object of the said conspiracy, the said C. C. Hilton, and the said Jeb S. Howell did, by threats and force, within the district aforesaid, at the

County of Walton, State of Florida, and within the jurisdiction of this Court, arrest the said Rudolf Lanninger, and restrain him of his liberty, against his will and consent.

And afterwards, to-wit: on the day aforesaid, in pursuance of and for the purpose of effecting the object of the said conspiracy, the said S. E. Huggins, in the County of Walton, State of Florida, within the district aforesaid, and within the jurisdiction of this Court, did compel him, the said Rudolf Lanninger, to accompany him the said S. E. Huggins towards the place of business of the said Jackson Lumber Company.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

L. M. DAVIS,
Foreman of the Grand Jury.
WILLIAM B. SHEPPARD,
United States Attorney.

(Indorsements:) No. 597 [590]. The United States vs. W. S. Harlan, S. E. Huggins, Jeb S. Howell, C. C. Hilton. A True Bill. L. M. Davis, Foreman of Grand Jur. Indictment. Violations Sections 5440 and 5526, R. S. U. S. Conspiracy to Commit Peonage. Filed November 15th, A. D. 1906. F. W. Marsh, Clerk. William B. Sheppard, United States Attorney.

That thereafter the said Court having jurisdiction to try the said offense so charged in and by the said indictment on the 10 day of Nov., 1906, during said term of said Court the said W. S. Harlan, S. E. Huggins, Jeb S. Howell and C. C. Hilton entered pleas of not guilty to said indictment, and the United States having joined issue upon said pleas, the said W. S. Harlan, S. E. Huggins, Jeb S. Howell and C. C. Hilton were placed upon trial upon said indictment, and thereafter on the 23 day of November, 1906, during said term of said Court the jury empaneled and sworn in said cause to try said issue so joined as aforesaid returned the following verdict:

13 We, the jury, find the defendants guilty as charged except as to Jeb S. Howell, whom we find not guilty.
(Signed) R. B. SIMPSON, Foreman.

as by the record thereof in the said Court remaining more fully appears, which said judgment and conviction still remain in full force and effect, and not in the least reversed or made void.

The said W. S. Harlan further says that he is one and the same person so indicted and convicted as aforesaid and not another and different person; the said W. S. Harlan further says that the crime of conspiracy of which he was so indicted and convicted, as aforesaid, and the crime of conspiracy for which he is now indicted is one and the same crime of conspiracy and not other and different crimes; the said W. S. Harlan further says that the conspiracy with which he was charged in and by the indictment hereinabove set forth, if any such conspiracy existed was established and made out upon one and the same facts and transactions as the conspiracy charges in and by this indictment; that this indictment and said indictment hereinabove set forth were predicated upon one and the same acts, facts and transactions, and not upon various and different acts, facts and transactions; the said W. S. Harlan further says that this indictment and the said indictment hereinabove set forth upon which he was convicted were found against him upon the testimony of the same witnesses, on one oath, and one examination, as to the offense alleged in this indictment and as to the offense alleged in the indictment hereinabove set forth, which said testimony and examination covered the entire period, acts, facts and transactions set forth in this indictment and in the indictment hereinabove set forth, all of which the said W. S. Harlan is ready to verify, wherefore he prays judgment if the United States ought further to prosecute the said indictment against him; the said W. S. Harlan in respect to the said offense in this indictment mentioned, and that he the said W. S. Harlan, may be dismissed and discharged from the same.

W. W. FLOURNOY,
W. A. BLOUNT, JR.,
SCOTT M. LOFTIN,
MAXWELL & REEVES,
Attorneys for the Defendant, W. S. Harlan.

State of Florida,
Escambia County.

Before the subscriber personally appeared, W. S. Harlan, who being by me first duly sworn upon oath says, that he is the defendant in the above stated case and that the matters and things set forth in the above and foregoing pleas
14 are true.

W. S. HARLAN.

Sworn to and subscribed before me this the 27 day of November, A. D. 1906.

[Seal] F. W. MARSH,
Clerk U. S. Circuit Court, Northern District of Florida.

(Indorsed:) United States of America vs. W. S. Harlan, et al. Plea of Auter Convict. Filed Nov. 27, 1906. F. W. Marsh, Clerk. Maxwell & Reeves, Law Offices Pensacola, Fla.

And afterwards, to-wit: upon the 27th day of November, A. D. 1906, came the United States by its attorney, the Honorable William B. Sheppard, and demurred to the plea aforesaid, which demurrer is in the words and figures following, to-wit: which demurrer was sustained by the Court after argument of counsel.

15 In the Circuit Court of the United States, Northern District of Florida.

The United States
vs. No. 590.
W. S. Harlan, et al.

Indictment for Conspiracy, Violation Sec. 5440, R. S. U. S.

Now comes the United States, by William B. Sheppard, United States Attorney for the Northern District of Florida, and demurs to the plea of auter convict filed and interposed by the defendant in said indictment, W. S. Harlan, on this twenty-seventh day of November, A. D. 1906, and for cause of demurrer assigns:

1. That it appears upon the face of said pleas numbered one and two, that they constitute no bar to the prosecution of the said charge against said defendant, W. S. Harlan.

2. That it appears upon the face of the said pleas numbered one and two, that they constitute no defense or reason why the said defendant, W. S. Harlan, should not be tried upon the charge in said indictment preferred.

3. That it appears upon the face of the said plea numbered

one, that the said defendant, W. S. Harlan, has not been convicted heretofore upon any indictment charging one and the same crimes of conspiracy, nor is it alleged in said plea with sufficient certainty and definiteness that the said defendant W. S. Harlan has been convicted heretofore on any indictment charging one and the same crimes of conspiracy as the charge contained in the indictment in this cause.

4. That it appears upon the face of the said plea numbered two, that the crime of conspiracy of which he was so indicted and convicted, as alleged in said plea, and the crime of conspiracy for which he is now indicted is not one and the same crime of conspiracy, and it is further shown in and by said plea that it is another and different crime.

5. That it appears upon the face of the said plea numbered two, that the evidence to establish, or tending to establish and make out the charge contained in the indictment upon which the said defendant, W. S. Harlan, alleges in said plea that he was heretofore convicted, is not one and the same as that necessary to establish, or tending to establish the conspiracy charged in this indictment.

16 6. That it appears upon the face of the said plea numbered two, that the indictment in this cause, and the indictment upon which the said defendant alleges that he was convicted, were not predicated upon one and the same facts, and transactions, and it further appears that the said indictments were predicated upon various and different acts, facts and transactions.

7. That is [it] is not alleged in said plea numbered two, with sufficient certainty and definiteness that the said defendant, W. S. Harlan, has heretofore been convicted on any indictment charging one and the same crime of conspiracy as the charge contained in the indictment to which said plea is filed.

8. That the said plea numbered two interposes and suggests a defense that is not good in law in this, that the said plea alleges "that this indictment and the said indictment heretofore set forth upon which he was convicted were found against him upon the testimony of the same witnesses, on one oath, and one examination, as to the offense alleged in this indictment and as to the offense alleged in the indictment hereinabove set forth, which said testimony and examination covered

the entire period, acts, facts and transactions set forth in this indictment and in the indictment hereinabove set forth," which said alleged defense is not good in law to be interposed by plea, nor is it a bar to the prosecution of the indictment in this cause.

Wherefore the United States by its said attorney prays the judgment of the Court declaring the said plea bad in substance and law, and no defense to the indictment in this cause.

WILLIAM B. SHEPPARD,
United States Attorney, Northern District of Florida.

United States of America,
Northern District of Florida.

I, William B. Sheppard, United States Attorney for the Northern District of Florida, hereby certify that in my opinion the above demurrer is good in point of law, and being duly sworn, depose and say that the same is not interposed for the purpose of delay.

WM. B. SHEPPARD.

Sworn to and suscribed before me this 27th day of November, A. D. 1906.

[Seal]
F. W. MARSH,
Clerk U. S. Circuit Court, Nor. Dist.
Florida.

(Indorsed:) Filed Novemer 27th, 1907. F. W. Marsh, Clerk.

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17 And afterwards, on the same day, came the United States by its said attorney and filed in the office of the clerk of said Court the following motion and order, to-wit:

In the Circuit Court of the United States, Northern District of Florida.

The United States
vs. No. 590.
W. S. Harlan, Robert Gallagher, Oscar Sandor, E. Newlander, Walter E. Grace, Archie Bellinger, Harry Halverson and John LaMaistre.

Indictment, Violation Sec. 5440, Revised Statutes U. S.

Now comes the United States, by William B. Sheppard, United States Attorney for the Northern District of Florida, and moves the Court to strike from the said indictment, before the pleas of the said defendants are accepted the following paragraph, to-wit: the last paragraph in said indictment, as follows:

"And afterwards, to-wit: on the twenty-fourth day of July, in the year of our Lord, one thousand, nine hundred and six, in pursuance of, and for the purpose of effecting the object of the said conspiracy, the said C. C. Hilton, the said Jebb. S. Howell, and the said S. E. Huggins did, by threats and force, within the district aforesaid, and within the jurisdiction of this Court, to-wit: in the County of Walton, State of Florida, arrest one Rudolf Lanninger, who had been before the time aforesaid, in the employ and was indebted to, or alleged to be indebted to the Jackson Lumber Company, a corporation, and who had quitted the employment aforesaid, while in debt to, or alleged to be in debt to the said Jackson Lumber Company, and restrained him of his liberty, against his will and consent, and compelled him, the said Rudolf Lanninger to accompany them, the said C. C. Hilton, Jebb. S. Howell and S. E. Huggins, to the place of business of the said Jackson Lumber Company."

And for cause shows unto the Court that the said allegations are immaterial to the charge in said indictment contained, and the acts alleged in said paragraph are not to be enquired of in the trial of said cause.

WM. B. SHEPPARD,
United States District Attorney, Northern
District of Florida.

Upon consideration of the above motion, and the same being argued by counsel for the respective parties, it is now ordered and adjudged that, before pleas are interposed by the said defendants, or any of them, the said paragraph contained in the said indictemnt be, and the same is hereby stricken from the said indictment, and declared to consitute no part thereof.

CHAS. SWAYNE,
Judge.

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11 At a stated term of the Circuit Court of the United States, for the Northern District of Florida, begun and held at the City of Pensacola, within the district afore-

said, on the tenth day of November, in the year of our Lord, one thousand, nine hundred and six. Present, the Honorable Charles Swayne, Judge presiding, among the proceedings had were the following, to-wit:

The United States
vs. No. 590.
W. S. Harlan, Robert Gallagher, Oscar Sandor, E. Newlander, C. C. Hilton, Jebb. S. Howell, John Atwell, Walter E. Grace, S. E. Huggins, Archie Bellinger, Harry Halverson, one Angelo, one Lemater.

Indictment, Violation Sections 5440-5526, R. S. U. S.

And now at this time the grand jury of the United States, duly chosen and empaneled and sworn in said Court at said term thereof, came into open Court and presented the foregoing indictment, indorsed "A True Bill, L. M. Davis, Foreman of Grand Jury. Filed Novemer 10th, A. D. 1906. F. W. Marsh, Clerk."

Whereupon, upon the motion of the United States Attorney, it was ordered by the Court that a bench warrant be issued instanter for the apprehension of each of the said defendants in said indictment.

And afterwards, to-wit, on the thirteenth day of November, A. D. 1906, the said defendants being brought into Court on the said bench warrant, and applying for bail, the Court fixed bail in the sum of one thousand dollars for each of said defendants, which was accordingly given, and the defendants discharged from arrest and custody.

And afterwards, to-wit, on the fourteenth day of November, A. D. 1906, the defendants demurrer to the said indictment came on to be heard, and after argument by counsel for the respective parties, and consideration by the Court, it was ordered that the said demurrer be and the same was overruled and denied.

And upon the same day and at the same time, the defendants brought on for argument their motion to strike certain portions of said indictment, and the same being argued by counsel and considered by the Court, it was ordered by the Court that the said motion be denied.

And afterwards, to-wit, on the twenty-seventh day of November, A. D. 1906, the following proceedings were had in said cause in open Court, to-wit:

The United States
vs. No. 590.
Jebb. S. Howell, et al.

Indictment, Violation Sections 5440-5526, R. S. U. S.

19 And now at this time came the United States, by William B. Sheppard, United States Attorney for the Northern District of Florida, and asked leave of Court to nol pros. the above entitled cause as to Jebb. S. Howell, only.

Whereupon the Court ordered the said indictment dismissed as to the said Jebb S. Howell, only, without prejudice as to the other defendants, and the said defendant, Jebb. S. Howell discharged from his bond.

And thereupon, the United States, by its said attorney, asked the Court for an order severing, for the purposes of trial, the said defendants, C. C. Hilton and S. E. Huggins and John Atwell and one Angelo.

Whereupon the said Court permitted and directed that the said defendants, C. C. Hilton, S. E. Huggins, John Atwell and one Angelo have a separate trial from the other of said defendants, and directed that the United States have leave to proceed to the trial of the other defendants mentioned in said indictment, and granted a severance as to those above named.

Thereupon, the United States, by its said attorney, filed and entered a motion to strike certain portions of the said indictment, for the reasons specified in said motion, whereupon, the Court made and caused to be entered of record the following order, to-wit:

Upon consideration of the above motion, and the same being argued by counsel for the respective parties, it is now ordered and adjudged that, before pleas are interposed by the said defendants, or any of them, the said paragraph contained in the said indictment be, and the same is hereby stricken from the said indictment, and declared to constitute no part thereof.

CHAS. SWAYNE, Judge.

And thereupon, the said defendant, W. S. Harlan, being arraigned, upon said indictment, interposed a plea of auter convict, which plea was in writing, and constitutes a part of the record of this cause.

Whereupon, the United States, by its said attorney, interposed a demurrer to the said plea, which demurrer being argued by the respective parties and considered by the Court, it was ordered that the said demurrer be, and the same was sustained, and the said plea of auter convict was thereupon declared by the Court bad in law, and of no avail as a defense to said indictment.

Whereupon, all the said defendants, with the exception of those to whom a separate trial had been granted, were arraigned and entered, by their counsel the following plea, to-wit:

20 Waiving arraignment, defendants, W. S. Harlan, Robt. Gallagher, Oscar Sandor, E. Newlander, Walter E. Grace, Archie Bellinger, Harry Halverson and one John LaMaister, plead "not guilty this November 27th, 1906, Blount & Blount, Scott M. Loftin, Maxwell & Reeves, Wm. W. Flournoy, Attys. for Defts. Dated November 27th, 1906.

Whereupon the said cause was called for trial, and by order of the said Court the following jury was called, to-wit: 1. J. A. Gilmore. 2, John G. Welsh. 3, Michael Puhtell. 4, S. A. Johnson. 5, Julius Boley. 6, C. L. White. 7, C. F. Shad. 8, Victor Holst, Jr. 9, W. T. Williams 10, C. J. Levy. 11, Frank Creamer. 12, J. A. Johnson, who being duly chosen, tried and sworn, and it being the hour of adjournment, the Court made and caused to be entered the following order, to-wit:

It is ordered that during the trial of this cause, the said jury be not allowed to separate, and for that purpose be in the care and custody of the United States Marshal, and that during their deliberations and the said trial, they be furnished their meals and lodging, which shall include the bailiffs in charge thereof.

And afterwards, on the twenty-eighth day of November, A. D. 1906, the following proceedings were had in said cause, to-wit:

The United States
vs. No. 590.
W. S. Harlan et al.

Indictment, Violation Sec. 5440-5526 R. S. U. S.

And now at this time this cause came on again to be heard, and the said jury being in their box, and the said defendants and their counsel in Court, the cause proceeded on the taking of the testimony of the witnesses in the cause, and it being the hour of adjournment, the jury were given in charge of the marshal as heretofore ordered.

And afterwards, on the twenty-ninth day of November, A. D. 1906, the following proceedings were had in said cause, to-wit:

The United States
vs. No. 590.
W. S. Harlan et al.

Indictment, Violation Sec. 5440-5526 R. S. U. S.

And now at this time this cause came on to be heard again, and the said jury being in their box, and the said defendants and their counsel in Court, the cause proceeded on the taking
the testimony of the witnesses in the cause, and it
21 being the hour of adjournment, the jury were given
in charge of the marshal as heretofore ordered.

And afterwards, to-wit: on the thirtieth day of November, A. D. 1906, the following proceedings were had in said cause, to-wit:

The United States
vs. No. 590.
W. S. Harlan et al.

Indictment, Violation Sec. 5440-5526 R. S. U. S.

And now at this time this cause came on again to be heard, and the said jury being in their box, and said defendants and their counsel in Court, the cause proceeded on the taking the testimony of the witnesses in the cause, and it being the hour of adjournment, the jury were given in charge of the marshal as heretofore ordered.

And afterwards, to-wit: on the first day of December, A.

D. 1906, the folowing proceedings were had in said cause, to-wit:

The United States
vs. No. 590.
W. S. Harlan et al.

Indictment, Violation Sec. 5440-5526 R. S. U. S.

And now at this time this cause came on again to be heard, and the said jury being in the box, and the said defendants and their counsel in Court, the cause proceeded on the taking of the testimony of the witnesses in the cause, and it being the hour of adjournment, the jury were given in charge of the marshal, as heretofore ordered.

59

And afterwards, to-wit: on the third day of December, A. D. 1906, the folowing proceedings were had in said cause, to-wit:

The United States
vs. No. 590.
W. S. Harlan et al.

Indictment, Violation Sec. 5440-5526 R. S. U. S.

And now at this time this cause came on again to be heard, and the said jury being in their box, and the said defendants and their counsel in Court, the cause proceeded on the taking the testimony of the witnesses in the cause, and it being the hour of adjournment, the jury were given in charge of the marshal, as heretofore ordered.

And afterwards, to-wit: on the fourth day of December, A. D. 1906, the following proceeding were had in said
22 cause, to-wit:

The United States
vs. No. 590.
W. S. Harlan et al.

Indictment, Violation Sec. 5440-5526 R. S. U. S.

And now at this time this cause came on again to be heard, and the said jury being in their box, and the said defendants and their counsel in Court, the cause proceeded on the taking the testimony of the witnesses in the cause, and it being the hour of adjournment, the jury were given in charge of the marshal as heretofore ordered.

And afterwards, to-wit: on the fifth day of December, A. D. 1906, the following proceedings were had in said cause, to-wit:

The United States
vs. No. 590.
W. S. Harlan et al.

Indictment, Violation Sec. 5440-5526 R. S. U. S.

And now at this time this cause came on again to be heard, and the said jury being in their box, and the said defendants and their counsel in Court, the cause proceeded on the taking the testimony of the witnesses in the cause, and it being the hour of adjournment, the jury were given in charge of the marshal, as heretofore ordered.

And afterwards, to-wit: on the sixth day of December, A. D. 1906, the following proceedings were had in said cause, to-wit:

The United States
vs. No. 590.
W. S. Harlan et al.

Indictment, Violation Sec. 5440-5526 R. S. U. S.

And now at this time this cause came on again to be heard, and the said jury being in their box, and the said defendants and their counsel in Court, the cause proceeded on the taking the testimony of the witnesses in the cause, and it being the hour of adjournment, the jury were given in charge of the marshal, as heretofore ordered.

And afterwards, to-wit: on the seventh day of December,

A. D. 1906, the following proceedings were had in said cause, to-wit:

The United States
vs. No. 590.
W. S. Harlan et al.

Indictment, Violation Sec. 5440-5526 R. S. U. S.

And now at this time this cause came on again to be heard, and the said jury being in their box, and the said defendants and their counsel in Court, the cause proceeded on the taking of testimony of the witnesses in the cause, and it being the hour of adjournment, the jury were given in charge of the marshal, as heretofore ordered.

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23 And afterwards, to-wit: on the eighth day of December, A. D. 1906, the following proceedings were had in said cause, to-wit:

The United States
vs. No. 590.
W. S. Harlan et. al.

Indictment, Violation Sec. 5440-5526 R. S. U. S.

And now at this time this cause came on again to be heard, and the said jury being in their box, and the said defendants and their counsel in Court, the cause proceeded on the taking the testimony of the witnesses in the cause, and after hearing the evidence aforesaid of the witnesses, the argument of counsel, and the charges of the Court, the said jury retired to consider of their verdict, and after due consideration, came into Court and presented the following verdict, to-wit:

"Pensacola, Fla., Dec. 8, 1906.

We, the jury, find the defendants, Robert Gallagher, Oscar Sandor and W. E. Grace guilty as charged. And the defendants,. W. S. Harlan, E. Newlander, Archie Bellinger, Harry Halverson and John LaMaiter not guilty.

"JOHN G. WELSH, Foreman."

Whereupon the Court not being fully advised in the premises, and upon application of the defendants convicted as aforesaid, admitted each to bail in the sum of two thousand dollars each, which they did then and there give, pending sentence by the Court.

And afterwards, to-wit: on the fourteenth day of December, A. D. 1906, the following proceedings were had in said cause, to-wit:

The United States
vs. No. 590.
Robert Gallagher, Walter E. Grace and Oscar Sandor.

Indictment, Violation Sec. 5440-5526 R. S. U. S.

And now at this time came the United States by William B. Sheppard, United States Attorney for the Northern District of Florida, who prayed the judgment of the Court upon one Robert Gallagher, one Walter E. Grace and one Oscar Sandor, who were heretofore convicted in this Court of a violation of Section 5440-5526 of the Revised Statutes of the United States under indictment No. 590, and the said defendants, and each of them being in Court, and the Court being fully advised in the premises, ordered the said defendants to the bar of the Court, whereupon the following sentences were imposed, to-wit:

SENTENCE.

It is ordered and adjudged by this Court, that the said defendant, Robert Gallagher, be taken hence to the Federal Penitentiary at the City of Atlanta, in the State of Georgia, and there confined, at hard labor, for and during the 24 term and period of fifteen months, and that he further pay to the United States of America the fine or penalty of one thousand dollars, and that he stand committed until the terms of this sentence be complied with, or until he be discharged by due course of law.

It is further ordered and adjudged by this Court, that the said defendant, Walter E. Grace, be taken hence to the Federal Penitentiary, at the City of Atlanta, in the State of Georgia, and there confined, at hard labor, for and during the term and period of thirteen months, and that he further pay to the United States of America the fine or penalty of one thousand dollars, and that he stand committed until the terms of this sentence be complied with, or until he be discharged by due course of law.

It is further ordered and adjudged by this Court, that the said defendant, Oscar Sandor, be taken hence to the Federal

Penitentiary, at the City of Atlanta, in the State of Georgia, and there confined, at hard labor, for and during the term and period of thirteen months, and that he further pay to the United States of America the fine or penalty of one thousand dollars, and that he stand committed until the terms of this sentence be complied with, or until he be discharged by due course of law.

Upon motion of the several defendants, the Court ordered that the said defendants be permitted to have five months from this date in which to file their bill of exceptions in this cause.

United States of America,
vs. No. 590.
Robert Gallagher, Oscar Sandor and W. E. Grace.

Indictment, Violation Sec. 5440-5526 R. S. U. S.

This cause coming on for a hearing upon the application of the defendants for a suspension of sentence herein until the fifteenth day of May, A. D. 1907, for cause appearing in said application; and the Court being advised of its opinion.

It is ordered that the process for the execution of the judgment and sentence on this date imposed upon the defendants in this cause be, and the same is hereby stayed until the fifteenth day of May, A. D. 1907, upon condition, however, that the defendants do enter into bond, with two good and sufficient sureties, to be approved by the Court, or the Clerk thereof, as follows:

The said defendants to each enter into bonds in the sum of three thousand dollars each, said bonds to be conditioned for the appearance of said defendants before this Court at Pensacola, Florida, on the fifteenth day of May, A. D. 1907, there to be and remain from day to day, and term to term, and not depart the same without leave of Court, and to receive, submit to, and abide by such order of this Court as may be made, and to abide the sentence upon them on this day imposed.

Done and ordered this 14th day of December, A. D. 1906.

CHARLES SWAYNE,
Judge.

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25 And afterwards, to-wit: upon the 14th day of December, A. D. 1906, came the defendants, by their

attorneys, and filed in the office of the Clerk of said Court, a petition for stay of process, which is in the words and figures following, to-wit: which petition was allowed by the Court, as is more particularly set out in the minutes of the Court for said day.

In the United States District (Circuit) Court, in and for the Northern District of Florida.

United States of America
vs.
Robert Gallagher, Oscar Sandor and W. E. Grace.

Peonage Indictment No. 590.

The petition of the defendants in the above stated case respectfully shows unto your Honor that the testimony taken in the trial of said cause is voluminous, containing about two thousand (2000) pages; that the said testimony has not been transcribed and that it will require a period of about four (4) months for the stenographer to transcribe said testimony. That on this account, the defendants are unable to present at this time an assignment of errors necessary for the issuance of a writ of error; that it is the purpose of the defendants to sue out a writ of error as soon as they can secure the testimony with which to make up the assignment of errors. The premises considered, the defendants move the Court for a stay of the execution of all process under the judgment and sentence herein until the 15th day of May, A. D. 1907, upon the defendants entering into a bond in such amount and with such conditions as the Court may direct.

WM. W. FLOURNOY,
SCOTT LOFTIN,
W. A. BLOUNT, JR.,
MAXWELL & REEVES,
Attorneys for Defendants.

(Indorsed:) In re Peonage Cases. Indictment No. 590. Petition for Stay of Process. Filed Dec. 14, 1907. F. W. Marsh, Clerk.

26

In the United States Circuit Court, Northern District of Florida.

I, Charles Swayne, Judge of the United States District

Court, in and for the Northern District of Florida, do hereby certify that during the progress of the cause pending in the said Court wherein the United States of America was prosecuting W. S. Harlan, Robert Gallagher, E. Newlander, W. E. Grace, H. Bellinger, Oscar Sandor, Harry Halverson, John Lamata, Jebb S. Howell, C. C. Hilton, S. E. Huggins and John Atwell were defendants, the following proceedings were had, viz:

On the 13th day of November, A. D. 1906, the defendants interposed a demurrer to the indictment, which said demurrer was in the words and figures following, to-wit:

Demurrer of defendants to indictment heretofore printed at page 6.

* * * * * * * *

27 But the said Judge did then and there overrule the said demurrer, to which ruling of the Court the defendants did then and there except.

Thereupon, on the 13th day of November, A. D. 1906, the defendants filed a motion to strike from the indictment certain portions thereof, which motion was in the words and figures following, to-wit:

Motion of defendants to strike out certain parts of the indictment, heretofore printed at page 6.

* * * * * * * *

28 But the said Judge did then and there overrule the said motion, to which ruling of the Court the defendants did then and there except.

Thereafter, on the 27th day of November, A. D. 1906, the United States District Attorney filed a motion in the words and figures following, to-wit:

29 Motion of plaintiff to strike, and order thereon, heretofore printed at page 18.

* * * * * * * *

30

Which said motion the said Judge did then and there grant, to which ruling of the Court the defendants did then and there except.

Thereupon the United States District Attorney moved the Court to nol pros the indictment as to the defendants, Jebb S. Howell, and for a severance as to the defendants, C. C. Hilton and S. E. Huggins and John Atwell, which motion was granted.

Thereupon, on the 27th day of November, A. D. 1906, the defendant, W. S. Harlan, filed his plea to the indictment, which plea was in the words and figures following, to-wit:

Plea of defendant Harlan of auter convict heretofore printed at page 9.

* * * * * * * *

36 Thereupon, on the 27th day of November, A. D. 1906, the United States District Attorney did demur to said plea, which demurrer was in the words and figues following, to-wit:

Plaintiffs' demurrer to plea of auter convict, heretofore printed at page 16.

* * * * * * * *

38 The said Judge did then and there sustain the said demurrer to said plea upon the ground that the said conspiracy here charged in the indictment set out in said plea, to which ruling of the Court the defendants did then and there except.

Thereupon the defendants, W. S. Harlan, Robert Gallagher, E. Newlander, Walter E. Grace, Archie Bellinger, Oscar Sandor and Harry Halverson entered pleas of not guilty to said indictment.

On the 27th day of November, A. D. 1906, during a term of said Court, the issue so joined between the Government of the United States of America and the said defendants came on to be tried before a jury, and thereupon the said Government in order to maintain the issue on its behalf produced and caused to be sworn as a witness one JOHN SMITH, who testified as follows:

Direct Examination.

Q. What is your name?
A. John Smith.
Q. What is your home when you are at home?
A. New York.
Q. When did you leave New York?
A. The 21st of June.
Q. Where for.
A. From Miller and Franks.
Q. Where to.
A. Lockhart, Alabama.
Q. To do what?
A. To work in a mill.
Q. You were engaged to work in lumber work in a mill?
A. Yes, sir.
Q. You say you signed to work for the Jackson Lumber Company at Miller and Frank's?
A. Yes, sir.
39 Q. Was any of the company, the Jackson Lumber Company, anybody you recognize here present there?
A. At New York?
Q. Yes.
A. I seen Mr. Newlander at the docks.
Q. What time did you ship from New York—what day?
A. On Wednesday or Thursday.
Q. Did you see Mr. Newlander at the ships' dock?
A. Yes, sir.
Q. Did you see him after that on the vessel?
A. No, sir.
Q. Did anybody meet you at Savannah?
A. Mr. Gallagher.
Q. Point out Mr. Gallagher?
A. I am looking at him now.
Q. What did Mr. Gallagher do? What did you do when you got to Savannah?
A. We had to wait there for a train a half hour or so, and then we went to Fort Valley and stopped there.
Q. Before we get to that—were you working for wages when you reached the Lockhart camp?
A. Yes, sir.
Q. I believe you said that you went to work in the lumber camp?
A. I worked in the woods.
Q. What were to be your wages?

Counsel for defendants object to the question upon the ground that no sufficient predicate has been made for the introduction of the testirony.

Objection overruled and exception noted.

Q. What wages were you getting?

40 A. One dollar with board, and one dollar and a half without board, and ten hours a day.

By Mr. Flournoy:

Q. Was that fixed by your contract?

A. Yes, sir.

By Defendants' Counsel:

If the Court please, we ask that the testimony of the witness be stricken out.

By Mr. Sheppard:

Q. Is that the ticket or the paper given you? (Handing paper to the witness.)

A. Yes, sir.

Q. Was Mr. Newlander there at the time?

A. I did not see Mr. Newlander until we got to the ship, and then they took us down in the steerage, and when I come upon deck I met Mr. Newlander.

Q. Point out Mr. Newlander. (Witness here points out Newlander.)

Government's counsel here offers in evidence the contract.

By Defendants' Counsel:

For what purpose is it offered?

By Government's Counsel:

For the purpose of showing what the wages were to be where he was to work, etc.

By Defendants- Counsel:

We object to the introduction of the paper, because it is irrelevant and immaterial, and not connected in any way with these defendants, or either of them.

Objection overruled and exception noted.

Paper was here read to the jury as follows:

North American Labor Exchange.
Miller & Frank.
201 Second Street, New York.

Statement.

41 The following is a statement of the items contained in contract with ...., prepared in accordance with Section 6 of Chapter 327 of the Laws of 1906:

Name of employer,
Name des Stellunggebenden.
Alkalmazast ado neve.
Pracu dajuceho meno.
Jackson Lumber Company.

Address of employer,
Addresse des Stellunggebendan,
Alkalmazast ado czime.
Pracu dajuceho adressa.
Lockhart, Ala.

Name of employe,
Name des Angestellten,
Alkalmazott neve.
Robotnikov meno.
John Smith.

Addressee of employee,
Addresse des Angestellten,
Alkalmazott czime.
Robotnikov adressa.
217 Owl Street.

Nature of work to be performed,
Art der auszufuhrenden arbeit,
A munka minosege.
Jaka Praca.
Laibore.

Hours of labor,
Andahl der arbeits-stunden,
Munka orak szama.
Pracovna doba.
Ten.

Wages offered,
Angebotener Lohn,
Felajanlott munkaber.
Aki plat.
$1.50 a day.

Destination of the persons employed,
Bestimungsort der Angestellten,
Az Alkalmazottak Kuldetesi helye.
Urcite miesto praci.
Lockhart, Ala.
42

Terms of transportation,
Transport-bedingungen,
Odposilanie.
Szallitasi feltetelek.
$18.00 deducted, $3 monthly; after 6 months returned.

Remarks,
Anmerkengen,
Poznamka.
Negjeszegek.
No strike.

If more than one person is engaged, list of names and addresses will be found attached.

New York, ..., 190... Frank & Miller.
....

Q. Do you remember the day you started on your trip to Lockhart in pursuance of this engagement?

A. Yes, sir.

Q. What day of the month was it?

A. 21st of June.

Q. When you reached Savannah you met this gentleman that you designate as Mr. Gallagher?

A. Yes, sir.

Q. What was done by Mr. Gallagher, if anything? Where were you received or where did you join this gentleman?

A. As soon as I got off the ship Mr. Gallagher was right there.

Q. Were there any more beside yourself on that trip?

A. There was twenty-seven of us.

43 Q. Was not an account or any number taken of you as you came off of the vessel by anybody?

A. I do not know.

Q. Where did you proceed from the ship's dock at Savannah—where did you go?

A. We took the train.

Q. The company you were with—the party you mean?

A. Yes, the whole lot of us.

Q. Did any of these gentlemen you saw here accompany you on the train?

A. Not a one but Gallagher.

Q. Did your train stop at any point in Georgia?

A. Fort Valley, Georgia.

Q. What did you do at Fort Valley?

A. We was supposed to stop eight hours to wait for the next train to come along, and there was a lot of colored people around there—and we talked to them about how the place was at Lockhart, how they treated people, and they told us they beat people up there—

Counsel for defendants object to the testimony.

Q. Tell us what you did?

A. We questioned these colored people there and they told us—

Q. Tell us what you did?

A. They told us there was fever out there—

Q. Do not tell what they told you.

A. We run away from Fort Valley.

Q. About how many of you?

A. Five in my crowd.

Q. Can you name some of them?

A. There was John Davis, Joe Davis, Lewis Abraham and William Keller and me.

44 Q. How far did you proceed?

A. To the next station, eight miles or nine miles away.

Q. What did you do there?

A. Got tired of walking and laid down on the platform.

Q. Who was it got you?

A. The sheriffs.

Q. Tell us what was done with you?

A. There was five of us laying down on the platform; the sheriffs come along and kicked us on the soles of our feet, and said come along and get on the wagon, and then they told us where they were taking us back in the wagon—

By Defendants' Counsel:

Now, young man, tell what you know, not what you heard.

Q. Where did you go after the sheriff took you?

A. They took us back to town.

Q. Back to Fort Valley?

A. Back to Fort Valley, and then there was a head sheriff there; he says, did you get the boys, and the other two sheriffs said yes, we got them; and then he called Gallagher.

Q. Was Mr. Gallagher there then?

A. Yes, sir; and then the head sheriff says, what you want to do, go to jail and fight the contract, or go back to Lockhart, and we says we sooner go to Lockhart than go to the chain gang. Gallagher says, lock them up; and Gallagher whispered something in his ear, and then they took us back in the car, and Gallagher says, go to sleep.

Q. When was that?

A. Early in the morning.

Q. You went back in the car, then?

A. Yes, sir.

Q. Did you see any other party brought back?

45 A. The next morning I seen the other gang of eleven that ran away brought back by the sheriffs.

Q. Did you see any whispered conversation between Gallagher and the sheriff after they brought back the other crowd?

A. When Gallagher says, lock them up, the sheriff whispered something in his ear.

Q. Then where did you go?

A. To Lockhart.

Q. What sort of work did they put you—what camp?

A. The log camp, where Gallagher is superintendent of.

Q. How far from Lockhart was that?

A. Five miles.

Q. Is it connected with Lockhart by railroad?

A. Yes, sir.

Q. Well, what day did you arrive at the camps?

A. We got to Lockhart at twelve o'clock at night, and then had to wait for the train, for the locomotive, about a half hour or so, and they took us out to Lockhart—out to the camp.

Q. Now state how the sleeping quarters and the dining quarters were arranged at the camp; what sort of place did you sleep in?

A. I had a pretty good place to sleep.

Q. I want to know the general arrangement of the cars?

A. I do not know any arrangement.

Q. Were there several cars there for the men to stay in, at night?

A. Yes, sir; there was four or five cars.

Q. Was the other car that was used for the office occupied by anybody that you know of?

A. One part of the car.

Q. Whose office was it?

A. Gallagher's office and the bookkeeper.

Q. Do you know a Bulgarian, or did you see a big man, or a man pointed out as a Bulgarian at that time?

A. Yes, sir.

46 Q. Was he on your trip?

A. Yes, sir.

Q. He came down with you?

A. Yes, sir.

Q. How long were you there at the camps before you were set to work?

A. We got there at two o'clock in the morning and the next day we was supposed to go and look around, and see how things go on.

Q. Did you see any fracus or disturbance between Mr. Gallagher and anybody at the cars?

A. Yes, sir; the first day we got there.

Q. State what that was, and what you saw?

A. I seen Gallagher get hold of the Bulgarian, and got him inside of his office, and started to beat him something fierce; he shoved him in a corner there, and punched and kicked him, and he had a revolver in his hand while he was doing the kicking and whipping.

Q. What did Mr. Gallagher say?

A. He says I will fix you for running away.

Q. Did you see this Bulgarian just before this trouble occurred?

A. No, sir.

Q. Then your attention was directed to it by the noise of the fuss in the car?

A. I seen him run out of the car; Gallagher was eating dinner with us, and I was about the center of the table, and all of a sudden I seen him run out of the car, and I looked out and seen him grab hold of the Bulgarian.

Q. You stayed there that night in the camp?

A. Yes, sir.

Q. Did you sleep in those cars?

47 A. Yes, sir.

Q. Did you know the foreman, Harry Halverson—Big Harry?

A. He was no foreman at the time I was there.

Q. Did you know Archie Bellinger?

A. Yes, sir.

Q. Can you point him out there?

A. He is the stout fellow there.

Q. Do you know Big Harry when you see him?

A. That is him there.

Q. Did you see these men that you pointed out here as Big Harry and others, pretty often?

A. Always around there.

Q. Did they carry anything?

A. I seen Archie Bellinger with his revolver in his pocket all the time.

Q. What was his job?

A. He was the highest foreman next to Gallagher.

Q. Did you see Big Harry at any time, about this time around there?

A. Yes, sir; I guess he was; I always seen him around the cars—fixing the cars.

Q. Do you know whether he was armed?

A. No.

Q. Do you know whether anybody was guarding or looking after these cars that the men slept in?

A. I know one fellow.

Q. Who was that?

A. His first name was Lewis.

Q. What did you see him doing—what seemed to be his business?

A. Seemed to be night watchman, walking around with a lantern all night, looking.

Q. Did you ever see him in the cars at night after the men had gone to sleep?

48 A. He come in our car once.

Q. What was he doing?

A. Looking around.

Q. Do you know what he was looking for?

A. He didn't say what he was looking for, looking around to see if everybody was there; that is what he was put there for.

Q. Did you like the situation? Did you care to stay there?

A. I didn't like to stay there at all.

Q. Why didn't you leave?

A. I was afraid to leave.

Q. Why were you afraid to leave?

A. Afraid I would get beat.

Q. Had you seen anybody beaten except the Bulgarian?

A. I seen Maginnis get beaten, too.

Q. State what was done to him?

A. Maginnis was kicked all round, and just didn't because he did not want to sleep—he didn't want to sleep in the place where Gallagher told him.

Q. When did that occur?

A. The first day he got there.

Q. Was he one of your party?

A. No, sir; they come way after us.

Q. What did you see done and who did it?

A. Gallagher done the hitting.

Q. Was any weapon displayed in that—

A. Yes, sir; there was three shots fired over him, right up to his face, and he made him get down on his knees, and he says, will you stay here, and Maginnis says I will.

Q. That was the same day that Maginnis got there?

A. Yes, sir.

Q. What did Gallagher say to Maginnis?

49 A. He says to him, going to stay here?

Q. What was the difficulty about?

A. He says going to stay here; going to run away? and Maginnis says, yes, sir; I will stay. I was not there when the row started, and I didn't hear the statements; I only heard about it afterwards where Maginnis got hit.

Q. Did you see any part of the Maginnis business?

A. Yes, sir; I seen him get hit.

Q. Where was Maginnis when you first saw him?

A. Gallagher was hitting him.

Q. Where was Maginnis?

A. He was up.

Q. Did Maginnis make any demonstration; were they fighting?

A. No; Gallagher was cursing him.

Q. Did you hear it?

A. Yes, sir; I heard that; and Maginnis says, all right, call me that, I will fix you for calling me that.

Q. How long after that was it before you heard the gun shoot three times?

A. Two minutes; when he says that Gallagher went right in on him, and kicked him, and Maginnis went back at him, and then Gallagher pulled his gun and shot three shots past his face.

Q. And after he fired Maginnis got on his knees?

A. No; he was down on his knees when he fired three shots, and Gallagher walked away laughing.

Q. You stated that Gallagher asked him about the time this fight was going on, about the time he kicked him or the time he shot, are you going to stay here?

A. I heard that afterwards, after the fight was over.

Q. You didn't hear that yourself?

A. No, sir.

50 Q. You need not state what you didn't hear yourself; not what others stated.

Cross Examination.

Q. What did you say your name is?

A. John Smith?

Q. How long have you had that name?

A. Since I came from New York.

Q. How long has it been since you came from New York?

A. Five or six months.

Q. What name did you have before you came from New York?

A. My name is hard to pronounce—John Chilcher.

Q. Just when did you change it?

A. When I went to the office of Miller and Frank, in New York.

Q. Where were you born?

A. New York.

Q. How old are you now?

A. Going on twenty-one.

Q. What is your religion?

A. Catholic.

Q. What nationality are you?

A. German.

Q. Now, the first man you saw at the dock was Mr. Newlander?

A. Yes, sir.

Q. Had there been a previous arrangement between you and any person to meet Mr. Newlander at that point?

A. No; he just asked us if we were going to Lockhart, and asked us where we were going to sleep, and to come down to the steerage way.

Q. Had you previously arranged to go to Lockhart?

51 A. Yes, sir.

Q. Had somebody requested you to go to Lockhart?

A. On the outside?

Q. Yes, anywhere?

A. No.

Q. How came you to take a notion to go to Lockhart?

A. I passed the office there and I seen the sign, one hundred and two hundred men wanted.

Q. You saw the sign where one hundred or two hundred men were wanted. Did you have any communication with anybody, or just go down to the steamer?

A. I went in the office first and asked.

Q. Did you sign any agreement there?

A. Yes, sir.

Q. What agreement was that—the one that has just been offered in evidence?

A. No; I got that down at the dock.

Q. Where is the agreement you signed in the office?

A. It is in the office.

Q. Did you keep a copy?

A. No, sir.

Q. You do not know what that agreement contains?

A. No, sir.

Q. How many went down with you to the boat?

A. Twenty-seven.

Q. And it was when you got to the boat that you signed this agreement here?

A. That one there—the one I signed he kept himself.

Q. You didn't sign it at all?

A. The one I signed he kept himself, and this one he gives me.

Q. Did you get one yourself?

52 A. That is it there. (Alluding to the agreement offered in evidence.)

Q. You went to Savannah, Georgia, and disembarked there? Is that correct?

A. Yes, sir.

Q. When you disembarked at Savannah, and took a train for Lockhart the other twenty-six took the same train—did they or not?

A. The same train.

Q. All together?

A. Yes, sir.

Q. You were furnished tickets?

A. No; we didn't get any tickets; Gallagher had everything; we didn't do anything, only just follow Gallagher; that was all.

Q. Was Gallagher in the same car with you?

A. Yes, sir.

Q. And when you reached Fort Valley, Georgia, you undertook to run away?

A. Yes, sir.

Q. You and four others?

A. Me and four others.

Q. The sheriff brought you back?

A. Yes, sir.

Q. Did he have a warrant for your arrest?

A. No, sir.

Q. You don't know whether he had one or not?

A. If he had one he didn't show it to us.

Q. Mr. Gallagher was not there with you?

A. No, sir.

Q. When did you next see Mr. Gallagher?

A. Right at the big building there, supposed to be the guardhouse. Gallagher says, lock them up.

53 Q. When you reached Lockhart, you didn't stop at Lockhart, did you?

A. Yes, sir.

Q. The labor you performed, you performed in Lockhart?

A. In the lumber camps.

Q. You didn't work in the camps?

A. I didn't work in the mill at all.

Q. The log camps are not at Lockhart, are they?

A. Five miles away.

Q. You didn't work at Lockhart?

A. No, sir.

Q. Is that in Florida or in Alabama—the log camps?

A. In Alabama.

Q. How long was it after you arrived that you saw the first difficulty between Mr. Gallagher and one of the men?

A, That was between two and three o'clock we got there, and the difficulty was between twelve and one, at noon time that was going on.

Q. At the diner hour?

A. Yes, sir.

Q. What was the name of the man he was in altercation with?

A. The Bulgarian, we called him.

Q. Have you seen him here since you have been here?

A. Yes, sir.

Q. Was he with the rest of you this morning?

A. Yes, sir.

Q. Repeat so much of the conversation as you yourself heard between Mr. Gallagher and this Bulgarian—not what somebody told you on the outside?

A. All I heard, I will fix you for running away.

Q. That was all you heard, the only remark you heard betwen them?

A. Yes, sir.

54 Q. Did you see them at the time, or just simply heard the remark?

A. I was there at the time.

Q. Did it occur in the car or outside?

A. Outside of the car; he grabbed him outside of the car, but he hit him inside of the car.

Q. The remark was made on the outside of the car?

A. Yes, sir.

Q. You say he grabbed him on the outside of the car?

A. Yes, sir.

Q. And then they went into the car?

A. He had hold of him tight when they went into the car.

Q. And that was after the noon hour upon the day of your arrival?

A. Between twelve and one o'clock.

Q. What time did you reach there?

A. The camp?

Q. Yes?

A. Between two and one, I ain't sure; I know we got there sometime in the morning—it was dark.

Q. And this was between one and two in the afternoon on the same day that you reached there?

A. Yes, sir.

Q. You have no idea of the day of the month when you left Savannah?

A. We left New York the 21st. It took three days and three nights to get across—somewhere around the 25th or the 24th.

Q. Then it took you about a day to reach Lockhart?

A. I ain't sure of the time because we lost a day in Fort Valley.

Q. You say you arrived somewhere between the 25th and 27th at the Lockhart camps?

A. Yes, sir.

Q. Do you know which one of these days—

A. 27th we were in Lockhart, because I sent a letter home on the 27th.

55 Q. Did you send the letter the day you got there or the day following?

A. I ain't sure of that.

Q. You reached Lockhart somewhere between the 25th or the 26th, and possibly the 27th?

A. Yes, sir.

Q. Who was the next man that you spoke of as having seen Gallagher have a difficulty with?

A. Maginnis.

Q. When was that?

A. That was the first day he come. The first day he arrived.

Q. Did you arrive the same day he did?

A. No, sir.

Q. Did he come down—was he one of the 27 that came down with you from New York?

A. No, sir.

Q. What day was it that Maginnis arrived there?

A. I do not know—about a week after we got there—a week or two.

Q. Had you ever seen Maginnis before?

A. No, sir.

Q. When did you first discover him at the camp? What time of day?

A. Right after supper.

Q. Was it dark or daylight?

A. Daylight.

Q. Did you get supper before dark?

A. Yes, sir; we quit at six o'clock, and as soon as we got to the camp, you got your supper or dinner.

Q. Did Maginnis take supper with you?

A. I do not know.

Q. How long after supper was it?

A. Just as soon as got through supper.

56 Q. Did this occur inside of the car or on the outside?

A. Around the last car.

Q. How many cars were there?

A. Four or five.

Q. Boarding cars?

A. Yes, sir.

Q. All together on the track?

A. Yes, sir.

Q. Ordinary box cars, were they?

A. Yes, sir.

Q. What car did you occupy?

A. At the time I slept in the last car.

Q. What do you mean by the last car; do you mean the end car?

A. Yes, sir; I ain't sure whether I slept in that car then. I slept in two cars, and I ain't sure whether I slept in that car or the car away off.

Q. How far were you from the car that Maginnis occupied?

A. I was standing right in front of the office there.

A. [Q.] What did you see Maginnis and Gallagher do when the difficulty began?

A. I seen the crowd rush together.

Q. That was the first you discoverd of it?

A. Yes, sir.

Q. Did you go up there then?

A. I did.

Q. How far were you from them?

A. A little further than from here to the back wall.

Q. And did you see yourself--not what others told you—did you see any licks pass between them?

A. Yes. sir.

Q. What did you see?

57 A. I saw Gallagher kick him.

Q. You saw him kick Gallagher?

A. He made an attempt to kick him, but as soon as he made an attempt to kick him, Gallagher pulled out his revolver, and that scared him, and he tried to run back, and hide himself, and then he pulled him out of the corner—

Q. Maginnis tried to run?

A. He tried to run back.

Q. You didn't hear any remarks between them?

A. Cursing, that is about all I heard.

Q. Was Maginnis sworn as a witness with you this morning?

A. No, sir.

Q. You didn't see him this morning?

A. No, sir.

Q. How long did you work for these camps up there?

A. About two weeks; I put in about 17 or 18 days.

Q. You say you stayed because you were afraid to leave?

A. Yes, sir.

Q. On account of having witnessed these two encounters?

A. Yes, sir; the reason I was afraid was because they might whip me.

Q. Did you, during the time you remained there, work for them each day?

A. Yes, sir.

Q. You didn't go off the premises?

A. No, sir.

Q. You didn't go down to Florala?

A. The fourth of July I was over there; I didn't work that day.

Q. Did anybody go with you?

A. Yes, sir.

Q. Who were they, laboring men?

58 A. Yes, sir.

Q. Just the laborers?

A. Yes, sir.

Q. How many went?

A. Four of us.

Q. Ordinary laborers—did you go back to work?

A. Yes, sir.

Q. How long did you remain after that?

A. I do not know how long after the 4th of July.

Q. Who did you say you saw with a pistol?

A. All the foremen have pistols.

Q. You are not laboring there now?

A. No, sir.

Q. And have not labored there since about the third or fourth week after you went there?

A. No, sir.

Q. You say all the foremen have pistols?

A. Yes, sir.

Q. I understood you to say just now that you saw only one pistol, you say you didn't see somebody with one?

A. He was no foreman at the time, the one that I said didn't carry a pistol.

Q. How many men did you see with pistols then?

A. In that crowd there two of them, right there, Gallagher and Archie Bellinger.

Q. When did you see Mr. Gallagher with a pistol?

A. The first day we got there he bought a new pistol; one of those patent pistols in this shape, and he often practiced there.

Q. Are these the only men that had pistols that you know of?

A. All of them.

59 Q. Now, what about the other men?

A. At the commissary up there they all had pistols.

Q. What about some of the laborers?

A. Not that I know of.

Q. You never saw them?

A. No, sir; there was a cook there, I think his name was Pete—he had a pistol.

Q. Did he cook for you people?

A. Yes, sir.

Q. Now, I will ask you to designate, as nearly as you can, where you were at the time the encounter began between Mr. Gallagher and this Bulgarian?

(Handing witness a paper and pencil.)

A. When I first seen Gallagher and the Bulgarian, and had got done with my dinner, and I walked out, and I seen Gallagher run out. I was nearly done then; he was right at the end of the car, and I was in the middle.

Q. Were you at the table then or on the outside?

A. I was at the table.

Q. When he ran out?

A. Yes, sir.

Q. Had you finished your meal?

A. I was about done.

Q. And when you saw it, did you go out?

A. They all went out; they all stuck their heads out and the whole crowd was watching it; the whole camp was there.

Q. Have you any idea of the length of the cars that you were taking your meals in?

A. They are pretty long, they are longer than the railroad box cars.

Q. Did this particular car that you took your meals in on the day that you saw Mr. Gallagher strike the Bulgarian have partitions in it?

60 A. The dining car?

Q. Yes.

A. No.

Q. I mean the car—does the entire car—

A. The next car, right next to the dining car, has got partitions in it.

Q. Was there no partition in the dining car?

A. No, sir.

Q. Where is Mr. Gallagher's office?

A. Right next to the dining car—the next car.

Q. How many partitions are there between this and the dining car?

A. Only one partition.

Q. What kind of a door was there?

A. There was a screen door.

Q. Between them and the car?

A. Yes, sir.

Q. How many men were taking their meals in the dining car?

A. About eighty.

Q. In that car, dining car?

A. Yes, sir.

Q. Did they fill it?

A. Yes, sir.

Q. When you saw Mr. Gallagher first, did he come out of the car?

A. He come out of the car.

Q. What portion of the car?

A. He was away down at the end of the car, and from there come running out.

Q. By this office?

A. In the dining car. He was eating dinner with us.

Q. And went out of the dining car and had this altercation there?

A. Yes, sir.

61 Q. Now, did you have any money when you left New York?

A. I had about a dollar.

Q. When did you first receive any money after you first went there?

A. I didn't receive any money except seventy-five cents, a check.

Q. Didn't you have ten dollars in Florala and spend it in a saloon?

A. No, sir.

Q. Were you not in bathing a few days before you left with a German and some others, when the German lost thirty-nine dollars?

A. Yes, sir.

Q. You were in bathing when that thirty-nine dollars was lost?

A. Yes, sir.

Q. It was not very long after that that you left there, did you?

A. About two weeks after that I left there.

Q. Right after that you did have some money, didn't you?

A. I didn't; the money I had was the fourth of July; I sold my ring, and give it to Gallagher first. I took off the fourth of July, and I asked Mr. Gallagher to give me my ring back, and I then went to Florala; I could not get any money off of Gallagher to spend, so I went to work and sold my ring for five dollars, and that is how I got the money.

Q. You said that you didn't have any at Florala?

A. I had five dollars on the fourth of July when I sold my ring, and Gallagher knows it, too.

Q. Are you entirely clear in your mind at this time as to what the exact remark was made by Mr. Gallagher at the time the sheriff brought you back when you undertook to make your escape at Fort Valley?

A. As soon as he sees us he says, lock them up, lock them up.

Q. Did he say anything further?

A. That is all; and then the sheriff whispered something in his ear, and he says, all right, go to sleep in the car.

Q. You testified before Mr. Marsh, the com-
62 missioner, in the preliminary examination, didn't
you—didn't you testify on that occasion that you
heard no conversation between Mr. Gallagher and the Bulgarian?

A. I was not asked to answer anything like that, that is why I did not answer.

Q. Were you not asked this question: Did you hear any conversation between him and Gallagher? And didn't you answer that question "No"?

A. That is different altogether; they was all talking; I didn't know what they were talking about; that is why I says no.

Q. I am not going into that. Didn't you testify that at the preliminary examination?

A. I cannot remember any more—it is too long ago.

Q. Now then, your mind—that matter was fresher in your mind then than it is now?

A. Just the same. I cannot forget that.

Q. Didn't you testify at that preliminary examination that the only thing you heard Gallagher say at the time he was in the difficulty with the Bulgarian was, you were trying to get away?

A. Yes, sir.

Q. Was that all you heahd him say?

A. Yes, sir; and he cursed.

Q. Were you not asked on that examination whether he used any profanity, and did you not then answer, I do not know?

A. I do not remember that.

Q. All the transaction was then fresher in your mind than it is now, was it not?

A. I do not know.

Q. Did you and Maginnis work together while you were employed in the camps?

63 A. No, sir; I worked out in the woods, sawing down trees, and Maginnis worked on the railroad gang.

Q. You and Maginnis slept together?

A. Yes, sir.

Q. You and he were companions?

A. In Lockhart; I only knew him two weeks ago.

Re-Direct Examination.

Q. You say the only time you left the camp to go to Lockhart was on the fourth of July?

A. Yes, sir.

Q. And it was then that you had five dollars, that you sold your ring for?

A. Yes, sir.

Q. Were any of the bosses up there that day, around about there, that you saw?

Q. [A.] No, the whole camp worked that day except us. We always kept that holiday in New York.

Q. Did you ever see Maginnis before?

A. He was not there then.

Q. Did you ever see Maginnis before this occurred between him and Gallagher?

A. No, sir.

Q. That was the first time you ever saw him?

A. Yes, sir.

Re-Cross Examination.

Q. Do you know to whom you sold that ring?

A. A colored fellow.

64 Q. Do you know where he lives?

A. I do not know, never heard his name but once.

Q. You sold it to him in Florala?

A. Yes, sir.

Thereupon the Government called as a witness one WILLIAM KELLER, who having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?

A. William Keller.

Q. Where is your home?

A. New York City.

Q. What is your descent or nationality?

A. German descent.

Q. What is your religion?

A. German.

Q. When did you leave New York?

A. In June; can't tell the exact date.

Q. Do you know John Smith?

A. Yes, sir.

Q. Do you know—was it on the same trip when John Smith came down?

A. Yes, sir.

Q. How did you come to leave New York?

A. I went passed this agency and seen the sign out, so and so many men wanted to go to Alabama; there are all kinds of signs out—for coal mines—

65 Q. You applied to this agency to go to work?

A. Yes, sir.

Q. Where were you going to work?

A. Going to work in Lockhart.

Q. Do you know this man Newlander here?

A. Yes, sir.

Q. Did you see him up there at any time in New York, either then or later?

A. I seen him on the boat.

Q. That was after you had embarked from New York?

A. Right in New York.

Q. What was he doing?

Q. [A.] He just says good-bye, boys, and give us some cigarettes.

Q. You didn't see him any more on the trip?

A. No, sir.

Q. What wages were you getting at Locksart?

A. One dollar and a half per day.

Q. Did you see or meet anybody in Savannah?

A. Mr. Gallagher.

Q. Do you recognize him here?

A. Yes, sir.

Q. State where you first saw him, and what he was doing in Savannah?

A. He was waiting for us, and when we come to Savannah, he took us on the train.

Q. Where did you proceed?

A. We went to Fort Valley and stopped there.

Q. What did you do while you were stopped at Fort Valley?

A. Five of us ran away at Fort Valley.

Q. Were you one of the party?

66 A. Yes, sir.

Q. Who was with your party?

A. Smith, John Davis, Joseph Davis and myself.

Q. How far did you proceed?

A. To the next station back of Fort Valley. About nine miles.

Q. Did you return to Fort Valley?

A. No, sir. We slept there that night and two sheriffs—

Q. State how you were awakened and what was done with you?

A. We had gone to sleep there and two sheriffs come along and kicked our feet, and waked us up.

Q. How do you know they were sheriffs—did they have anything in their hands?

A. One of them had a light, and the other had a rifle in his hand, and then they searched us and didn't find anything on us, and told us we had to go back to the car.

Q. Did you understand what car?

A. Yes, sir.

Q. The car that you had left?

A. Yes, sir.

Q. What time was that, day time or night?

A. It was night time.

Q. Did you go back with them?

A. Yes, sir.

Q. What was done with you when you got back?

A. We met the high sheriff, and he says, which do you want to do—go back to Lockhart—

Counsel for defendants object to the conversation.

Q. Was Mr. Gallagher with this high sheriff?

A. No, sir.

Q. Did you see Gallagher any time—

67

The Court:

The objection that has been made will be sustained. What the sheriff said, unless Mr. Kallagher was present, is not evidence.

Q. Now, where did the high sheriff join you?

A. About a block away from the car.

Q. Did you see Gallagher at that time?

A. No, sir.

Q. When did you see him next?

A. The sheriff took us down to the car; Gallagher was jumping out of the car, and he says, have them locked up, to the sheriff.

Q. He was addressing the sheriff, Mr. Gallagher was?

A. Yes, sir; and the sheriff went over and spoke to Mr. Gallagher, and after that brought us over to the car, and Gallagher sayo, go to sleep.

Q. You said that was in the night time, was it?

A. Yes, sir.

Q. You stayed there until the next morning?

A. Yes, sir.

Q. Where did you proceed then?

A. To Lockhart.

Q. Do you know whether it was day light or night when you got back to the car?

A. It was night.

Q. It wasn't well day light?

A. No, sir.

Q. You proceeded from there to where?

A. Lockhart.

Q. Do you know when you arrived at the camp?

A. It was month of June, I could not tell you the exact date.

Q. Where were you put to work?

A. Five miles back from Lockhart.

68 Q. At the lumber camp or at the turpentine camp?

A. At the lumber camp.

Q. How long did you work there?

A. Between three and four weeks.

Q. Did you get any compensation or pay for the time you were there?

A. No, sir.

Q. Did you owe the company when you started to work at the Lockhart camps?

A. Yes, sir.

Q. What for?

A. I owed the company for transportation, and I got some overalls and things that I needed.

Q. Do you know what that was?

A. Eighteen dollars.

Q. And you got some overalls?

A. Yes, sir.

Q. Did there come down on the trip a man known as the Bulgarian?

A. Yes, sir.

Q. Did you see an occurrence the first day you got there between Mr. Gallagher and the Bulgarian?

A. Yes, sir.

Q. State to the jury what you heard, not what others may have told you, but just what you heard and saw yoursell.

A. The Bulgarian was going up the stairs, was about three steps from the top, and Gallagher got him and pulled him up, and says, I will fix you for running away; he kicked him and punched him, and had a gun in one hand, and kicked him with his feet.

Q. You don't know how many times he kicked him?

A. No. sir

Q. And you did hear him say, I will fix you for running away?

69 A. Yes, sir.

A. [Q.] What time of day was it?

A. Twelve o'clock.

Q. What were you doing at the time?

A. Just sitting down to eat dinner.

Q. Were there a good many eating dinner in that car?

A. Yes, sir.

Q. How were these cars connected. Did they have a platform in front of them?

A. There was no platform between the two cars; you see, down where the office was, there was one big platform there, and you could stand on it and look in the window, and ask for whatever you wanted.

Q. The platform was on the outside of the office car?

A. Yes, sir.

Q. And it was two or three or four steps from the ground to the car?

A. About six steps.

Q. Did you ever see a man known as Maginnis there?

A. Yes, sir.

Q. Did he come down with the party?

A. No, sir.

Q. How long had he been there before you saw him?

A. A week before.

Q. Did you see Maginnis and Gallagher in any fracas?

A. I was about a block away when it occurred.

Q. You didn't hear what it was about yourself?

A. No, sir.

Q. Did you see any of it?

A. No, sir; all I heard was three shots went off.

Q. Three pistol shots?

70 A. Yes, sir.

Q. How long did you remain after the Maginnis occurrence?

A. About two weeks.

Q. How did you get away?

A. I ran away on Saturday afternoon.

Q. The time you were there after the Maginnis occurrence, and the Bulgarian occurrence, did you notice any men that were looking after the cars—watching the cars?

A. Yes, sir.

Q. How many and who?

A. One watchman there, he was the regular watchman, his first name was Louis, and after Maginnis and several ran away, the next night there was a man by the name of Big Harry standing there with a gun.

Q. Do you see Big Harry here?

A. Yes, sir.

Q. Did you see a gun?

A. Yes, sir.

Q. Once or more than once?

A. More than once.

Q. Did Louis carry a gun?

A. No, sir; I would not swear to that?

Q. Do you know whether or not this watchman, Big Harry was looking or watching the cars; state what you saw him doing?

A. He was sitting around, walking around the car. I seen him first walk around the car with a rifle, and then he come in front of the car, and stayed there.

Q. Did you hear him say at any time what his business was, or what he was doing?

A. No, sir.

Q. Do you know when Big Harry came on, about how long after the Maginnis occurrence?

71 A. Maginnis ran away one night and the next night Bog Harry was put there.

Q. Had they been brought back?

A. No, sir.

Q. So it was after the boys ran away that Big Harry came on with his rifle?

A. Yes, sir.

Cross Examination.

Q. You applied to the agencies in New York that had advertised for laborers?

A. Yes, sir.

Q. Did you go there with John Smith?

A. Yes, sir.

Q. You knew John Smith before he came here?

A. Yes, sir.

Q. How long have you known him?

A. A year or so, I guess. I could not tell you the exact time.

Q. You and he had been together in New York?

A. Yes, sir.

Q. What time did you leave these cars that you spoke of having left at Fort Valley; was it day or night?

Q. [A.] When we left the cars it was about 5 o'clock at night.

Q. Was it after dark?

A. No, sir.

Q. Was Mr. Gallagher there with you?

A. Yes, sir.

Q. In the same car that you people came in?

A. Yes, sir.

Q. He occupied a seat in the same car that you people were occupying?

72 A. Yes, sir.

Q. You do not know whether some charge had been preferred against you or not; I mean by that, you do not know whether any charge had been brought against you at Fort Valley or not?

A. No, sir.

Q. Now, when did you get back to the car, what time was it?

A. I could not tell you the time—it was eleven o'clock.

Q. Had you boys visited any house or gotten anything to eat from the time you left the car?

A. No, sir.

Q. You did not visit any farm house?

A. No, sir.

Q. You say when the sheriff brought you back Mr. Gallagher says, lock them up, or shut them up?

A. Yes, sir; lock them up.

Q. That you say was right there in the car?

A. Yes, sir.

Q. Were you locked up in the car?

A. After the sheriff got done talking to us, he says, go in the car and go to sleep.

Q. You testified before the United States Commissioner didn't you in this case?

A. Yes, sir.

Q. Did you on that occasion testify with respect to the difficulty between Mr. Gallagher and this Bulgarian, state that it occurred about a week after you arrived there?

A. No, sir; it was the same day we arrived there.

Q. I am asking you if you testified to that state of facts before the commissioner?

A. No, sir.

Q. Were you not on that occasion asked the question, How long had you been working at he camp then, and didn't you say about a week?

73 Counsel for Government objects.

The Court:

I think the question as asked is one that has been answered, but since the question has been discussed, I will overrule the objection.

A. No, sir; I didn't answer about a week. It happened on the same day I got there.

Q. Did you hear any conversation between Mr. Gallagher and this Bulgarian at the time of the difficulty?

A. No, sir; no conversation that I know of.

Q. Did you hear any remark at all?

A. No, sir; I heard Gallagher say I will fix you for running away, and that was all the conversation there was; the Bulgarian could not speak in English.

Q. Were you not asked, at the preliminary examination, that is before the commissioner, what was said to him, that is referring to the ques ion as to what was said to this Bulgarian, and did you not answer, "I did not hear anything?"

A. No, sir; all I heard Mr. Gallagher say, I "will fix you for running away," and that is all I heard.

Q. Where have you been since your testimony was given before the commissioner?

A. Sitting right here.

Q. All the time? Where have you been during the time intervening, between the day your testimony was given and now?

A. I have been in town here, around the town here.

Q. Have you seen John Smith since then?

A. Yes, sir.

Q. Where did you see him?

A. I boarded at the same place with him, we went back to jail after that testimony.

74 Q. You have been with him ever since?

A. Yes, sir.

Q. Since that examination?

A. Yes, sir.

Q. You have been with him in jail locked up there together?

A. Yes, sir.

Q. How long ago was it since that testimony was given?

A. It was last week.

Q. I mean before the United States Commissioner; I mean the testimony before the United States Commissioner when you first came down here, about how long, I didn't ask you for the exact dates? It was some time in the summer?

A. I could not tell you how long that was.

Q. Was that the only conversation or remark you heard between Mr. Gallagher and the Bulgarian or either of them?

A. Yes, sir; that is all I heard.

Q. This dining car—did it have any partitions in it or not?

A. What do you mean?

Q. You know what I mean by partition?

A. Yes, sir.

Q. Was the partition through the car—did it cut it up into two different compartments?

A. No, sir.

Q. The entire car was taken up for dining car, was it?

A. Yes, sir.

Q. It was the dining car on the inside and the office car was on the other side?

A. The office was in a different car from the dining car.

Q. When did this difficulty between Mr. Gallagher and the Bulgarian—

75 A. When I first came up the Bulgarian was about the third step from the top, and Gallagher got hold of him, and says I will fix you for running away, and opened the door, and pushed him in the office.

Q. Did you see anything occur that did occur after he pushed him into the office?

A. Yes, sir; I seen him punch him, and he had a gun in one hand.

Q. Just what position did you occupy at the time the difficulty occurred?

A. Right in front of the dining door.

Q. Right inside?

A. Yes, sir; there was a screen door.

Q. Between the dining car and Mr. Gallagher's office?

A. There was a screen door right on the dining car, and in the office.

Q. Just mark off on this paper just how the cars were.

(Witness here marks diagram for counsel), which diagram is here attached marked Exhibit "B" and made a part hereof.

Q. Do you understand this diagram? Mark the office place and the dining car place?

A. This is one platform and the window of the office is here, and there is a platform right out there.

Q. Indicate your position on that platform at the time the difficulty occurred, making a cross mark where you stood?

A. There is a door there and I stood just outside the car, just right up against the door.

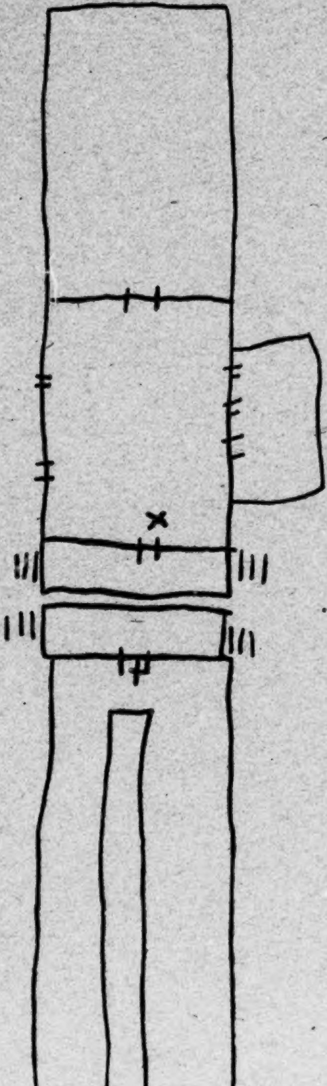
Q. Now, where was Mr. Gallagher?

A. He was over there, and he pulled him up the stairs, and pushed him in the office.

Q. Where was he when he first delivered the blow—was he in the office?

A. Yes, sir.

EXHIBIT "B." CASE No. 590.



77 Q. What is about the width of the door?

A. I cannot tell you exactly.

Q. Approximate it then?

A. Two and a half feet.

Q. How was it closed?

A. I cannot tell you how it was closed.

Q. You do not know whether it had a solid door or whether it had a screen door?

A. Both of them had screen doors.

Q. You were standing first inside the car, this dining car?

A. Yes, sir.

Q. Other men were back in here?

A. Yes, sir.

Q. These doors are beside each other are they, in these cars?

A. Yes, sir.

Q. And you were standing in the dining car door, and you saw what went on in this car?

A. Yes, sir.

Q. Look on this and make a cross mark where you say the first lick that you saw was delivered?

A. Here is the door, and right about there, and he then pushed him back.

(Diagram here offered in evidence, and marked Exhibit B.)

Q. These platforms are about the same as ordinary cars?

A. No, sir; just built cars, built between them.

Q. There are two or three feet between the two cars?

A. Yes, sir.

Q. You say that some men ran away, and after that you saw Big Harry?

A. Yes, sir.

Q. What men ran away?

78 A. John Smith and Lewis Abraham, and Maginnis.

Q. You know then that they ran away?

A. Yes, sir.

Q. They ran away on what day; do you know what day it was?

A. I think it was on Monday night.

Q. In what month?

A. In the month of July.

Q. Was it the early part, the middle part, or the latter part?

A. I could not tell you, but I think it was long about the middle of July.

Q. What time did they leave there?

A. About nine o'clock at night.

Q. Up to that time there had been no watchman there with a gun?

A. No, sir.

Q. After that there was one?

A. Yes, sir. It was not the same night, it was the night after they ran away.

Q. You know there had been none up to that time?

A. No, sir; not with a gun.

Q. What did you see Big Harry doing?

A. Walking around the cars.

Q. When?

A. At night.

Q. What time of night?

A. About seven o'clock.

Q. Did you see him any more besides that one night?

A. Yes, sir; he was there for two or three nights after they run away.

Q. In succesion?

A. Yes, sir.

79 Q. There is nothing by which you can fix the date that you saw him go there?

A. No, sir.

Q. What time of night would you see him—about seven o'clock each time?

A. Well, I would not see him every night about seven o'clock, I might see him a few minutes later, maybe about eight o'clock, maybe nine o'clock. You see where I slept, I slept right by a window, and by looking out of the window I could see him.

Q. Did you ever have any conversation with him?

A. No, sir.

Q. Did you ever hear anybody else have a conversation with him?

A. No, sir.

Q. Did you hear him have a conversation with anybody?

A. No, sir.

Q. You didn't hear him say anything?

A. No, sir.

Q. You say you knew Smith before he came down here?

A. Yes, sir.

Q. Did you know him by the name of Smith then?

A. Yes, sir.

Q. Smith even before he came here?

A. Yes, sir.

Q. That was the only name you ever knew him by?

A. Yes, sir; I never traveled with him much while he was in New York.

Re-Direct Examination.

Q. You say you did not associate with Smith before you left New York?

A. No, sir; wasn't with him much in New York.

80 Q. Now, at the time this occurrence you have testified to about the Bulgarian and Maginnis, did it attract any others that were in the dining car? Was any particular attention paid to it by the others?

A. Yes, sir; they all run up towards the door where I was standing.

Q. To see what was going on?

A. Yes, sir.

Thereupon the government called as a witness one JOHN FOSTER, who, having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?

A. John Foster.

Q. When did you leave New York last?

A. Thursday, June 21st.

Q. Where did you start from?

A. What dock?

Q. Yes?

A. Steamship dock in New York.

Q. Were they any others that came out with you on the steamer?

A. Twenty-six others, 27 in the party.

Q. Did you know Newlander, a man by the name of Newlander?

A. Yes, sir.

Q. Do you recognize him there?

A. Yes, sir.

Q. Did you see him in New York about the time you left there?

81 A. Yes, sir.

Q. Where?

A. At the dock.

Q. At the dock with the vessel?

A. Yes, sir.

Q. What was he doing?

A. He was talking to different people, and handing us tickets—red tickets.

Q. Red tickets?

A. Yes, sir.

Q. Did you see him after that aboard the ship?

A. Yes, sir; I saw him on board the ship. Not after we left. I saw him during the time we were still.

Q. Where had you started and for what purpose?

A. I had started there; I went to Miller and Franks and saw—I heard of Miller and Franks Information Agency in New York, and started for Lockhart, Alabama.

Q. To work for whom?

A. The Jackson Lumber Company.

Q. What were your wages, and what were you to do?

A. Mill work, that was what I was told I was to do. That is, piling lumber; mill work at the mill. The wages were to be $1.50 with board, and $1.00 without board.

Q. Did you have a contract?

A. He gave me a contract at the pier.

Q. Who gave it to you?

A. I forget now, I don't know whether it was Newlander or not; there was two at the pier.

Q. There was somebody with Newlander at the pier?

A. Yes, sir; probably so.

Q. And you think it was that party—what became of that paper you called the contract?

82 A. I don't know.

Q. You lost it?

A. Yes, sir.

Q. You proceeded to Savannah, did you?

A. Yes, sir; got there Sunday morning, and took a train presumably for Lockhart, but stopped at Fort Valley.

Q. Did you meet anybody in Savannah?

A. I met a man pointed out with black eyes, and shown to me as Gallagher.

Q. Do you recognize the same man here?

A. Yes, sir.

Q. Explain how his eyes were black then?

A. I do not know anything more than that they were black—from a blow or something.

Q. You are certain this is the same man that met you in Savannah?

A. Yes, sir.

Q. You proceeded then to Fort Valley?

A. Yes, sir.

Q. Mr. Gallagher was with you there?

A. Yes, sir.

Q. What occurred, if anything, to delay the train?

A. Mr. Ross and I, my chum, went off to get peaches, and stayed—we arrived there about one or two o'clock in the afternoon, and he let us go to get some peaches, and so we went off and got them, and about five o'clock we were told they were going to leave at half past eight that night. About five o'clock we came back, and on our way back we met five boys, John Davis, William Keller, Lewis Abraham, and two others, passing us, and we asked them where they were going, and they—

Q. Do not state the conversation between them unless Mr. Gallagher was along.

A. We went to the car and got something to eat,

83 and got aboard the car—

Q. Who did you see there?

A. Mr. Gallagher.

Q. What did he say about losing some of the boys?

A. About seven and a half or eight o'clock Gallagher was there, and asked whether the boys, five he called them, had come back, and we looked around the car, and could not find them, Gallagher and I, and he said, Well, I don't know where they are; and I says I didn't know either; and he says I guess it is pretty near train time, and I am going to find them; and he said, you stay by the car, and he went off. He came back again, half an hour afterwards, and it was then close on to train time, and he says, where are some of the others, and he asked me to look into the car, and I found that there were either thirteen or fourteen missing out of the twenty-seven. Well, he says, by God, I will get the sheriff after them and catch them; they must have run away.

Q. That was Gallagher?

A. Yes, sir.

Q. Did he say how long he would keep the train?

A. He said he would hold it there until he got them.

Q. Did you see any of the boys after that?

A. About three o'clock in the morning—I went to sleep in the car, and about three or four o'clock in the morning I was waked up by a noise, and got up and walked around the car, and I saw the five boys coming in.

Q. Did you see Bob then anywhere around?

A. I didn't see him exactly at that time; there was some outside of the car, another man, it was not Gallagher, I do not think.

Q. Were the other men armed?

A. No, sir.

Q. You do not know who it was?

84 A. No, sir.

Q. Was he right about where the boys had stepped upon the car?

A. The lights were off.

Q. You proceeded from there on to where?

A. Lockhart.

Q. Do you know when you arrived at Lockhart?

A. On Monday morning at twelve o'clock, during the night, and then we went to the log camp; arrived there about one o'clock in the morning.

Q. Do you know one designated or known as the Bulgarian?

A. Yes, sir.

Q. Did you see him around there; did he come with that party?

A. Yes, sir.

Q. Did the Bulgarian disappear from around the cars there? Did you go to work the same day, Monday?

A. No, sir.

Q. What became of the Bulgarian? Do you know whether he was around there all the time or not?

A. No, the Bulgarian was missing.

Q. Do you know of any search being made for him? Did you hear or know of any talk by Bob or any of the bosses as to what would be done?

A. The only thing I know I saw a wagon and some dogs coming along the road, and I asked a party what they were going for, and he says—

Q. One of the bosses you asked?

A. No, sir; I don't remember—

Q. You need not tell that then; what sort of dogs were these?

A. White and brown—blood hounds, I presume.

85 Thereupon counsel for defendants did then and there object to the answer upon the grounds that it was irrelevant and immaterial, and not connected with the defendants.

Q. Do you know the different breeds of dogs?

A. Yes, sir.

Q. What kind would you generally call them?

A. I would call them blood hounds, the ones I saw going a little way off; I would not swear they were blood hounds.

Q. Do you know whether that team you saw belonged there? Did you ever see it any more after that, this same team you designated as leaving there?

A. I do not know whether it was the same horse; I am pretty certain it was, but I would not like to swear to it.

Q. Was it a wagon that you knew in general use at the camp?

A. It looked like the wagon. I could not swear it was the same wagon.

Q. What wagon?

A. It looked like the wagon used by the turpentine commissary.

Q. You say the Bulgarian was missing?

A. Yes, sir.

Q. Did he return?

A. Yes, sir.

Q. You saw him again?

A. Yes, sir; the first I saw of him again was on the platform between the two cars.

Q. What was he doing or what was being done to him?

A. When I saw him he was just going to dinner, and was just about going up the steps, and Gallagher had hold of him with one hand, was pushing him, or had his hands like this, and striking him with his right hand, and also striking him or pushing him with his left, and kicked him on the platform between the two cars.

Q. What did Gallagher do to him?

86 A. He pushed him in the office.

Q. Did anything occur then?

A. I went up to dinner; the dining car—there are seats on both sides of the table, and I sat on the left hand side, going in, and was located so that I could see what was going on, and I saw Gallagher and this Bulgarian, Gallagher hitting him in the side—

Q. Inside the car?

A. Yes, sir; in the office.

Q. Whose office or what office?

A. Office of the Jackson Lumber Company there.

Q. That office was made in the car?

A. Yes, sir.

Q. Did you see any weapon anywhere?

A. No, sir.

Q. Was anything said by Gallagher that you know of; did you overhear anything said?

A. As I was going up to the car he says, I will teach you, you son of a bitch, to run away.

Q. Did you see a fellow that they called Maginnis there?

A. Yes, sir.

Q. Did you see him in any difficulty with Mr. Gallagher at any other time?

A. I know very little about that; I was attracted by—there was a big crowd around, and I went over; I do not know much about it.

Q. You did not see anything done between Gallagher and Maginnis?

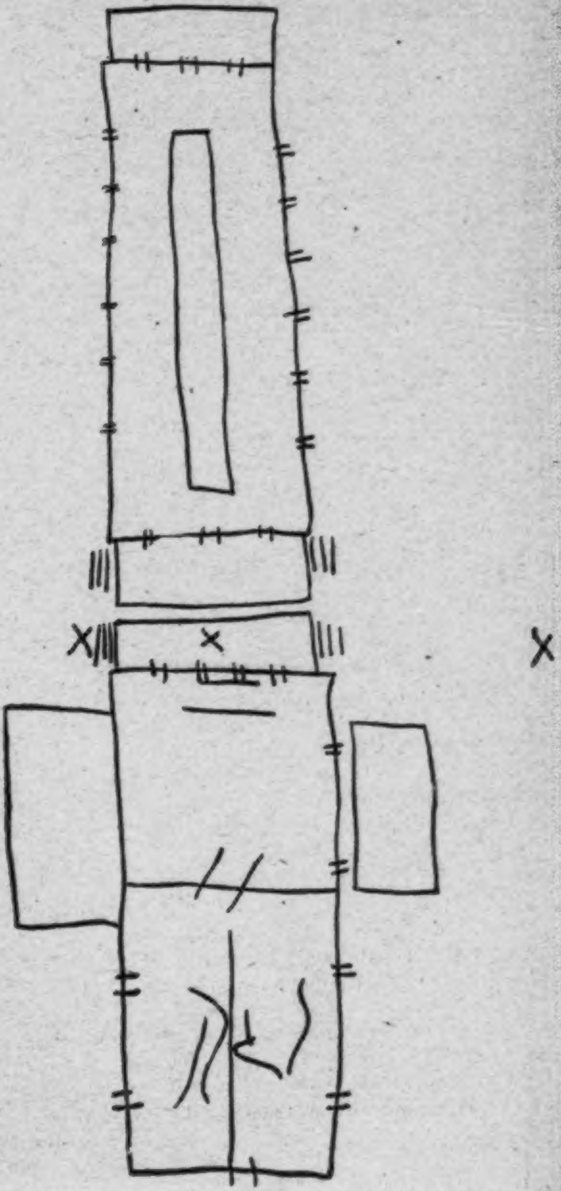
A. No. I pushed my way in and I saw Maginnis apparently get up off of the ground.

Q. Here is a diagram, "Exhibit C," which diagram is here attached and made a part hereof. Where were you?

A. When I saw him I was right there.

Q. Gallagher was right there?

EXHIBIT "C." CASE 590.



A. Yes, sir.

88 Q. This is not the dining car?

A. Yes, sir.

Q. There is a door here?

A. Yes, sir.

Q. Were there any windows in the car?

A. On the side.

Q. How long did you work there?

A. Until the 15th of September.

Q. You left of your own free will and accord?

A. Yes, sir.

Q. You never had any difficulty while you were there?

A. No, sir.

Q. Now, what kind of work did you do while you were there?

A. I was on the railroad all the time.

Q. Did you stay at night at these cars?

A. Yes, sir.

Q. And get your meals there?

A. Yes, sir.

Q. Now, while you were there about the time, or within two weeks after your arrival there, do you know of any other escapes or runnig away—

A. Oh, I know that some of the others, I would not swear to two weeks, but the boys commenced to leave, some commenced to leave about two or three weeks, I judge—I guess it was later than that.

Q. After you arrived?

A. Yes, sir.

Q. Do you know whether John Smith or Abraham left soon after you got there?

A. Yes, sir; but I do not remember the time.

Q. You missed them?

89 A. I missed them, and also the ones that left after that.

Q. Were there any guards around those cars when you first went there—the first night or two after you were there?

A. There was a watchman.

Q. Do you know his name?

A. Lewis May.

Q. Was at any time subsequent to that any other watchman put on, or did you see any other around?

A. Yes, I saw guards there.

Q. Did you know any of them—did you know them by name?

A. I know one.

Q. What was his name?

A. Harry Halverson.

Q. What was he called?

A. Big Harry?

Q. Do you recognize him here?

A. Yes, sir.

Q. Is he the fellow that is resting his head on his shoulder? How were your relations with him, friendly?

A. Yes, sir.

Q. When did he come on as a guard?

A. I saw him at night fall, and I saw him in the morning. He slept in the same car, and I saw him in the morning upon one or two occasions, when he had his rifle.

Q. What was he doing; what seemed to be his business?

A. I saw him apparently patrolling around the car like a guard, a regular guard of the car that was lying behind Gallagher's private car.

Q. That was at night time?

A. Yes, sir.

Q. Did you have any conversation with Big Harry or any of the bosses?

A. The conversation I had was with Angelo.

90 Q. Was he a boss?

A. He was my immediate boss, and talked to me all the time, and he said—

Q. Was he working for the Jackson Lumber Company at the camp?

A. Yes, sir, and my railroad boss, boss of the railroad gang I was in.

The defendants' counsel did then and there object to the said question and answer of the witness because it is not shown to have any connection whatever with the defendants, and because it is irrelevant and immaterial, and mere hearsay testimony.

But the Court did then and there overrule said objection which ruling of the Court the defendants' counsel did then and there except.

Q. Now state what the conversation was, how it occurred, and all about it?

A. The conversation—

Defendants' counsel did then and there object to the said question upon the ground that there is a conspiracy charge here, and in order that these separate and various acts should come in, there ought to be some testimony to prima facie establish the conspiracy independent of these acts. These acts, if done, it will be contended were done in pursuance of the conspiracy, and there is no prima facie evidence to establish a conspiracy.

But the Court did then and there overrule said objection in the language following:

The same trouble arises in the trial of almost all conspiracy cases. You cannot show conspiracy until you have shown the whole case. You cannot show it in one act. There is no one act that will establish a conspiracy, and because that one act, if it should be ruled out if it does not establish the conspiracy, and so on, and make objection to each. If when the
91 evidence is all in the counsel desires to make a motion which will cover everything to be stricken out, or any other reason, because the conspiracy has not been established by the acts, I will hear anything they have to say on that line, but at this time I will give you an exception.

To which ruling of the Court defendants' counsel did then and there except.

Q. Tell what you heard or what the conversation was with Angelo, and with any of the others about this guard out there, and what comparison was made with other places?

A. It was at the time the boys were running away and getting away from the camp, and I went out one evening and saw the guards and was talking to Angelo about it, and he says all houses not only guarded here, but they are guarded all over, even in Florala, they have got out people there to watch for any runaways that may be brought back from Florida or other parts. I says, yes, I says this looks pretty much like having a regular armed guard, and he knew that I had served in the .... war, and he says I guess it reminds you of your army camp, and I says yes it does, and he says they have got the same orders, to shoot to kill.

Q. Did you see—only of your own knowledge, what you saw or what you heard yourself—any of the boys brought back after that—after the time of the occurrence of the difficulty between Gallagher and the Bulgarian. Did you see anybody whipped there? Do you know Squarehead?

A. Yes, sir.

Q. Did you know Arthur Buckley?

A. Yes, sir; I saw Angelo hit him several times, I do not know how many times. Squarehead and once Buckley; Nathan Scott once, and Charley Haas several times, that is Angelo.

Q. Did you notice or observe the condition of Squarehead there at the time he was whipped?

92 A. His arms were all blistered up, both arms very much blistered by the sun, by his not taking care of himself.

Q. You saw Haas whipped on several occasions?

A. I mean struck.

Q. Who did that?

A. Angelo.

Q. Did Angelo do all the whipping you saw, or did you see any other whipping?

A. I did not see any other.

AFTERNOON SESSION.

Q. You say you knew Squarehead?

A. Yes, sir.

Q. You have testified about his arms, the trouble with his arms?

A. Yes, sir.

Q. Did you say that you knew Bellinger?

A. Yes, sir; I know him.

Q. Do you recognize him here as one of these parties?

A. Yes, sir.

Q. Did you have any conversation with Bellinger about the condition of Squarehead, and what he thought to do in relation to Squarehead?

A. No, sir.

Q. Did you have such a conversation with Big Harry?

A. Yes, sir.

Q. State what that conversation was.

A. Big Harry said that he was sorry that he had to hold Squarehead while he was being whipped, but that he was sorry that he was not above [able] to hold some of the other fellows that was charged with having stolen something.

93 Q. Did he say or did you understand from him who it was that did the whipping while he was being held?

A. No, sir.

Cross Examination.

Q. What is your age?

A. Forty-six.

Q. Where were you born?

A. Vermont.

Q. What has been your occupation before you came to work for the Jackson Lumber Company?

A. I have had different occupations.

Q. What are some of them?

A. Well, how many years ago do you want?

A. [Q.] Anytime?

A. Well, Brown, Hare & Company for five years on Aqueduct tunnel, and salesman for English Bell Company four or five years.

Q. Where for the past five years?

A. In 1899 I served as first engineer on the ...., and went to Porto Rico, and from there went back to New York, and worked for the Metropolitan Street Railway Company.

Q. How long have you lived in New York?

A. Most of my life, that is off and on.

Q. You came here after having visited this labor bureau did you not?

A. Yes, sir.

Q. You came down with these other 26 men; do you know of your own knowledge why the train was stopped at Fort Valley, Georgia?

Q. How long did you stay there?

A. From afternoon until 8 o'clock supposed, but I believe it was because it was to be attached to another train. We had a special car.

94 Q. And you left there at 8 o'clock the next morning?

A. No, supposed to leave at eight o'clock that night.

Q. You did not leave then?

A. No, sir.

Q. When did you leave?

A. The next morning.

Q. About what time?

A. I think about 10 or 11 o'clock; would not be certain as to the time.

Q. Do you know of your own knowledge—not what you may presume—why that train did not leave that night?

A. Only what Mr. Gallagher told me.

Q. The first difficulty you saw was when and where?

A. Difficulty?

Q. Yes, you spoke this morning of having seen some difficulty at the camp?

A. The first difficulty I saw was on the platform of the car—between the two cars.

Q. Did you see the difficulty or see the parties to it when the encounter began?

A. When I saw it the encounter had begun.

Q. You saw it before the encounter and after it?

A. No, when I saw them the encounter had begun.

Q. You didn't see it in the beginning?

A. I do not know. I saw Mr. Gallagher hitting and striking the German; I came around from this side of the car, so I do not know whether he had been striking him before that or not.

Q. They were engaged in the encounter when you first saw them?

A. Certainly.

Q. Which side of the car were you on?

A. I was on the outside, the side to where the opening to the office is.

Q. How does the track lie? North and south or
95 east and west; take this table and show us?

A. I was on this side; where Mr. Sheppard sits is the opening where they pay off the men.

Q. Well, take this diagram? Let this lie north and south; how did this stand?

A. That is where they pay off up there.

Q. These cars stand north and south?

A. There is the dining car; my car where I slept is up here.

Q. How far from this car?

A. Adjoining this car. I came along here.

Q. On the west side?

A. On this side going to my dinner.

Q. And when you came out there up those steps—

A. I was just going up those steps when I saw them there at that point.

Q. Now, when you came out of your car here, how long after you came out of your car here before you came up the steps—did you just walk right along?

A. Yes, sir.

Q. About what is the distance from where you came out up to there?

A. About that car, and ours is in the center, about the length of the car and another half car.

Q. Now, then, if you had been out on the ground you would have been likely to have seen them, would you not?

A. I do not know.

Q. Is there any obstruction out there?

A. There is no obstruction, but it had depended upon what time I got out of the car.

Q. You will please answer my question. If you got out of
the car was there any obstruction to have prevented
96 you from seeing it?

A. No obstruction.

Q. Do you know what day of the month that was when this encounter occurred?

A. I am not positive; it was about the 25th or 26th of June.

Q. What time of day was that?

A. Right at twelve o'clock or just at dinner time; sometimes a quarter past.

Q. Had you had dinner?

A. No, sir.

Q. Did all of you eat dinner together?

A. People that are late or anything like that can go in on the second table, or go in at any time, if there is a vacant seat in the car.

Q. Did you notice anybody else on this platform besides these two men, I mean Gallagher and the Bulgarian, when you got there?

A. I think there was some other men, coming up and going down from dinner; I didn't notice particularly who was there.

Q. How long after that before you saw this wagon that you spoke of having seen there going away?

A. How long after that?

Q. Yes?

A. Not after that at all.

Q. It was before?

A. Yes.

Q. You mean it was before the difficulty that you saw the wagon going away?

A. A long time before.

Q. About how many days?

A. How many hours?

Q. Yes, hours?

A. Three or four hours.

Q. Do you know who was driving the wagon?

97 A. No, sir.

Q. Did you see him after that?

A. I did not know the man.

Q. Where did you first notice the wagon and dogs?

A. Right at the back end of the dining car. The lower end of the dining car. The road runs across going towards the commissary.

Q. How many dogs did you notice there?

A. Two.

Q. Where did you get your experience in the breed of dogs?

A. I am a little bit of a hunter myself.

Q. Did you hunt with blood hounds?

A. No, not with blood hounds, but I like dogs, and am pretty well acquainted with dogs.

Q. That is where you got your experience as a hunter?

A. I know the difference between a setter and a pointer, and a spaniel and a blood hound, and it was not any of these dogs.

Q. You saw the wagon go away, did you see it come back?

A. No, sir.

Q. You never saw it come back at all?

A. No, sir.

Q. You do not know where it was going?

A. No, sir.

Q. Was anything about that wagon to distinguish it from any other wagon of that make?

A. No.

Q. You do not know whether the wagon belonged on the premises or belonged to somebody else?

A. No.

Q. Now, you spoke of having seen some trouble between Angelo and some of the parties?

98 A. Yes, sir.

Q. When did you first notice any trouble between Angelo and any person?

A. So many times—all the time I was on the railroad—every other day, so far as that goes.

Q. What was the character of the trouble?

A. If there was a man who was not lifting and getting ties or anything quick enough, and espectially the Jews, he would go after them and not only use bad language towards them, and then he had sometimes a stick, or anything he could pick up, that he would hit them with.

Q. What were your duties?

A. My duties were of a different character; I was on a part of the time on the ties, distributing the ties, and unloading the ties from the cars; unloading rails with the others.

Q. You were working alongside the other men—the same character of work?

A. Yes, sir; with them every day.

Q. That was in the railroad construction department was it?

A. Yes, sir.

Q. How far was it from the log camp proper?

A. It depended; every few days we were being moved to another spur or switch—spurs they call it there—running into the log woods; we would be laying track on one half a mile, then we would finish that one before we would get to another one; different localities.

Q. Do you know the name of any individual whom you saw Angelo strike or whip?

A. Three or four.

99 Q. Give them to me.

A. Charles Haas.

Q. When and where was that?

A. I do not know that I can tell you just when; I might be able to show you the place; but I cannot tell you where it was; it was one of the spurs; he had brought some water and upset the bucket, and some trouble arose from the water. That was the Buckley case, the only case against Buckley.

Q. What was said and done?

A. Well, he called him a damn son of a bitch, and some other nice names, and then picked up a stick and hit him a couple of times with it.

Q. How long was that after you first got there?

A. I could not tell you exactly how long it was; I imagine it was about three weeks possibly; some time in July.

Q. Then give me the name of another person?

A. Squarehead.

Q. What did you see done to Squarehead?

A. Well, Angelo was after him all the time for one thing or another. Different times for different causes, or at least claimed causes. He had been away one time, and there was so many different times that I cannot recall just exactly what happened in each case.

Q. Well, give me the name of another person besides Charles Haas, and Squarehead?

A. Arthur Buckley was another one; something about water—being too long away or something like that.

Q. What did he do to Buckley?

A. He hit him with a stick.

Q. Was there any fight between them? Did Buckley resent some of the language that had been applied to him?

A. There was no fight on Buckley's part that I saw. 100

Q. Was there any effort?

A. Any effort to fight?

Q. On Buckley's part?

A. No.

Q. Was that all?

A. That is all I know of.

Q. You have not seen Angelo about here have you?

A. No.

Q. You were a witness at the former trial were you not?

A. No, sir.

Q. You have never been a witness here before?

A. Here this time; yes, sir; I thought you meant the preliminary trial.

Q. You didn't see Angelo then did you?

A. No. He told me if he could get away you would not see him either.

Q. You knew when you came in here to testify that Angelto was not accessible, didn't you?

A. I didn't know but that they would get him.

Q. You knew he was not here?

A. I knew that he had not been found so far.

Q. Now, these men that you saw about those cars, when did you first notice any person there patrolling the cars?

A. It was about the time of the disappearance of the first two or three men, Maginnis and Abraham and John Smith.

Q. Why do call him a guard?

A. Because he acted like a guard, patrolling with his rifle, that is why I call him a guard.

Q. That is your opinion then? It is merely a matter of opinion with you as to whether it was a guard or not?

A. That is my opinion.

101 Q. You sometime saw a man going about these cars with a gun at night?

A. Yes, sir.

Q. Do you know whether about that time or immediately prior to that time there were several men that had lost things, supposed to have been stolen before they put this watchman on?

A. I heard about one case, I think, of stealing; some trouble about losing some goods.

Q. Do you know about how many men were employed there?

A. I do not know exactly, I think about one hundred and fifty or two hundred, one hundred and fifty probably.

Q. There were various nationalities and characters?

A. Yes, sir.

Q. What is your feeling towards these gentlemen?

A. My feeling?

Q. Yes?

A. Why, the same as ever. I have nothing against any one of them.

Q. How is—

A. I have no more feeling, never had anything to do with a good many of the gentlemen there.

Q. You endeavored to get the position of foreman, didn't you, from Mr. Gallagher?

A. Never.

Q. You never made any effort in that direction?

A. No, sir; the only thing in that connection was on the train down. I talked of railroad experience that is all, and after that there never was a word past [passed] between Mr. Gallagher and anybody else concerning foreman or anything like that. I never asked for a promotion or anything of that sort.

Q. Is it not a fact that you came and sat in the
102 same seat with Mr. Gallagher and asked him to give
you the position of foreman, and is not it a fact that
Mr. Gallagher told you—

Government counsel did then and there object to the question, which objection was then and there overruled by the Court.

Q. Is it not a fact that on that occasion Mr. Gallagher told you that he would see, he would wait, or words to that effect and substance?

A. I never even went any further than to tell Mr. Gallagher that I was brought up to a certain extent in the railroad business, and this conversation after we left Fort Valley was entirely with Angelo and a man named Pat, and it was after we left Fort Valley where we got Angelo, and after that Mr.

Gallagher never talked to me at all about anything. It was the mere conversation that takes place among one man going down and asking me what I could do. I never asked him for a foreman or anything like that, and never was approached by Mr. Gallagher. I never told him when he never asked me my qualification for a foreman.

Q. You say it was after Mr. Angelo came on board?

A. He was taken on at Fort Valley.

Q. Did you or did you not, when you were being interrogated on the stand the other day in a former trial against Mr. Harlan and some other men, charged with conspiracy, testify that you saw no whipping except that of Maginnis?

A. Maginnis?

Q. Yes?

A. I didn't testify to anything of the sort. I testified that I saw Jordsman beaten. I say I didn't see any what they call whipping—that was when I was asked about whipping—I called the barn whipping; this was a case of assault and beating; it was not a whipping. I did not call it a whipping
103 when you use your fist.

Q. That was it then?

A. That is just it.

Q. Did you make that statement or not?

A. I did not.

Q. Where did you sleep when you first went there, Mr. Foster?

A. I slept in the first car.

Q. How long did you remain in that car?

A. A couple of days.

Q. What became of you then?

A. I went in a house about a quarter of a mile from the track; I slept in the third car, the car next to the office car all the latter portion of the time from this until the 15th of September, when I left.

Q. You slept a day or two in one of the cars when you first went there?

A. Yes, sir.

Q. Then you changed to some house?

A. Yes, sir.

Q. Quite a distance away from there?

A. Yes, sir.

Q. How long did you continue to sleep in that house?

A. Five or six days.

Q. Do you know why you were changed?

A. Yes, sir.

Q. Why?

A. Because there was something on the boat, on coming down got some vermin, something like that.

Q. On the boat?

A. Yes, sir.

Q. What did vermin on the boat have to do with
104 you?

A. I was changed because there was something in my clothes that I was changed for.

Q. And you remained away a week, as much as, you think, a week?

[A.] It might have been ten days at the very most, and I went back in the second car, in the car with all the old-timers.

Q. Had these men that made their escape left there during the time you were absent, or after you went back?

A. After I went back.

Re-Direct Examination.

Q. At the time you say when you were going to the dining table, you had reached the platform between the cars, and was ascending the steps of that platform at the time you saw Gallagher and this man in contact?

A. I was at the bottom of the steps.

Q. Going up?

A. I was just going to go to dinner. Was at the bottom of the steps when I first saw the difficulty.

Q. Is it not a fact that Gallagher and the Bulgarian was on the opposite side of the car from you on the steps?

A. No. The opposite side, the platform of the two cars is just like that table there, and I was on this side before I could see on the top of this table.

Q. Now, if you had not been ascending the steps—

A. I saw it from the ground just the same.

Q. I understod you come up from the opposite side of the car when you were going to dinner, were you not, you could not have seen it unless you could have seen from the platform?

A. No, if I had been behind the car I could never
105 have seen it.

Q. And the car would have been an obstruction if you had been at that opening?

A. Yes, sir.

Thereupon the government called as a witness Mrs. ELIZABETH GIBSON, who, having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?
A. Mrs. Gibson.
Q. Where do you live?
A. Near Laurel Hill.
Q. In what county?
A. Walton County.
Q. Were you living there some time in July—this last past year; did you live near Mrs. Paul?
A. Yes, sir.
Q. How far from her—in the same side of the road?
A. No, sir.
Q. On the opposite side of the road?
A. She lived on one side of the road and I lived on the other.
Q. Do you remember, some time in July, of seeing three gentlemen near your house in a buggy, and another man that was running backward or walking backward?
A. Yes, sir.
106 Q. Would you be able to recognize any of these gentlemen now if you would see them? Did you know them?
A. No, sir.
Q. Did you ever see them since that you know of?
A. I do not know.
Q. See if this is the man, the one writing upon a tablet; tell what occurred right near your house in your own way, and who the parties were; that is, how many parties there were, or what they were doing?
A. I heard them cursing, and seen them draw their pistol upon a man, and seen them whip him.
Q. What was the man doing before they got the pistol on him? Did you see him before they got hold of him?
A. Yes, sir.
Q. State what you saw?
A. He was walking along the road, and they stopped him and drew a pistol on him, and stopped him.
Q. Were these men then in the buggy of [or] out?
A. Two of them were in the buggy.
Q. There were three men altogether?

A. Yes, sir; and when they got him the other one jumped in the buggy, and went and whipped him.

Q. Whipped him with what?

A. With the buggy whip.

Q. Did you see a revolver?

A. Yes, sir.

Q. What was done with the revolver?

A. Nothing, only throwed it on him.

Q. One of these three had the revolver?

A. Yes, sir.

Q. Did you see anything about the man that they were whipping that indicated or what would show his nationality
or whether he [was] an American or a foreigner?
107 Did you notice?

A. I do not know what sort of folks he was; I did not pay any attention to the man.

Q. What sort of a whipping was that that you saw given that man?

A. I could not tell you hardly.

Q. Was it a bad whipping or not much of a whipping?

A. It was what I would call a mighty bad whipping.

Q. They hit him several licks?

A. Yes, sir.

Q. Were they hard licks?

A. Yes, sir.

Q. Was that while one of the men was pointing the pistol at him?

A. Yes, sir.

Q. What was this man doing?

A. He throwed up his hands.

Q. Did he make any noise?

A. Yes, sir.

Q. Could you hear him say anything?

A. I could not understand him.

Q. What was done with him then?

A. They carried him towards Florala.

Q. Were they riding?

A. One man was leading him, and the other two came in the buggy.

Q. Who led him, the one ahead of the buggy?

A. Yes, sir.

Q. And they were going that way as far as you saw them?

A. Yes, sir.

Q. Had you ever seen the man before that was whipped?

A. No, sir.

Q. Which way was he traveling when you first
108 saw him?

A. Coming from towards Laurel Hill.

Q. All of them?

A. Yes, sir.

Q. Going towards where?

A. Towards Florala.

Q. How far is your house from Laurel Hill?

A. It was a mile and a quarter then, but not now.

Q. You lived at that time between Florala and Laurel Hill?

A. Yes, sir.

Q. And they were coming from the direction of Laurel Hill, and going towards Florala?

A. Yes, sir.

Q. How were they arranged traveling when you first discovered them?

A. Three of them on the buggy at the time, and the other one was walking.

Q. Which one was doing the walking?

A. The man that was whipped.

Q. And he got how near your house when they whipped him?

A. Right sort up against my house.

Q. Right opposite your house in the road?

A. Yes, sir.

Q. And your neighbor you spoke of, Mrs. Paul, lived just on the other side of the road opposite your house?

A. Yes, sir.

Q. What time of day was it?

9. In the evening.

Q. Day time was it?

A. Yes, sir.

Q. Were the houses thick along the road above
109 and below your place?

A. No, sir.

Q. Very few houses?

A. Yes, sir.

Q. Sparsely settled—and how far were you from this man?

A. I was not very far, could not tell you that.

Q. One hundred yards or fifty?

A. I could not tell you that, I never measured it.

Q. You can give me some idea; point out some object. Was it a quarter of a mile?

A. No, sir.

Q. Do you think it was 200 yards?

A. I cannot say.

Q. Were you on your porch or in your house?

A. I was in the house when it started, and I went to the door.

Q. It began when you were in the house, and you went to the door, and stood there and looked at it all the while?

A. No, sir; not all the time while it was going on.

Q. You do not know any of the men?

A. No, sir.

Q. You would not know them if you saw them again?

A. No, sir.

Re-Direct Examination.

Q. Do you remember the day of the month?

A. It seems like it was the 19th; I am not certain.

Q. You and Mrs. Paul—you say her house stood right opposite yours on the road, one a little lower down than the other?

A. It seems to me they stood facing one another.

Q. You do not live there now?

110 A. No, sir.

Q. How long since you lived there?

A. Nearly two months.

Q. You had just moved there when this happened?

A. Yes, sir.

Q. You say this cursing was out loud, and so that you could hear it?

A. Yes, sir.

Q. Pretty bad language was it?

A. Yes, sir.

Thereupon the Government called as a witness one DAVID CLARY, who, having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?

A. Davis Clary.

Q. Where do you live, Mr. Clary?
A. Four miles from Campton.
Q. How far from Florala or Laurel Hill?
A. Four miles.
Q. In what county?
A. Walton County.
Q. What direction from Laurel Hill?
A. West.
Q. What is your business or what was your business last July?

111 A. I was running a little turpentine business.

Q. Did you some time about the middle of July or the first two weeks of July see any strangers, foreign looking people, pass your place?

A. Yes, sir.

Q. How many?

A. Two.

Q. Do you remember the date or about the time?

A. No, sir; the best I recollect it was along about the 21st of July.

Q. How far were these strangers from you; did they speak to you?

A. Yes, sir.

Q. Did they come up to you?

A. Yes, sir.

Q. Could they talk English?

A. No, sir.

Q. Describe them as best you can from your recollection now.

A. I do not hardly think I can; they did not stay there long enough; they spoke to me and passed right on by.

Q. Were they about averaged sized men?

A. Yes, sir; pretty good sized men.

Q. Do you know whether one of them had a red beard or not?

A. I could not say.

Q. Was one larger or were they both about the same size?

A. I think one was a little larger than the other.

Q. They passed on?

A. Yes, sir.

Q. Did you see some time after that—do you know Mr. Gallagher?

A. Yes, sir.

Q. Do you recognize him here?

A. Yes, sir.

112 Q. Do you know John Atwell?

A. Yes, sir.

Q. Did you see either or both of these parties that I have just mentioned, Atwell and Gallagher, on the same day?

A. Yes, sir.

Q. Did they speak to you, either one of them?

A. Mr. Atwell did; Mr. Gallagher never spoke to me; he spoke to Mr. Runnell.

Q. In your presence?

A. Yes, sir.

Q. Mr. Gallagher spoke to Mr. Runnell in your presence?

A. Yes, sir.

Q. What did he say?

A. He asked him if he saw anybody pass there.

Q. Did he describe what sort of persons he was asking for?

A. No, sir; I don't think he did.

Q. Was Atwell there with Gallagher at the same time?

A. Yes, sir.

Q. What did he say?

A. When they came on back Mr. Atwell come walking up the railroad; that was after the man had done went down towards Crestview; and when they come on back Mr. Atwell was walking the railroad, and Mr. Gallagher was in his buggy.

Q. Was anybody with Gallagher?

A. Yes, sir; three more men in it.

Q. How were they seated in the buggy?

A. One was sitting on the back part of the buggy, and two were sitting on the seat, and one down in front.

Q. Did they look like men you had seen pass before that day?

A. I could not tell; I was not within 75 or 80 yards.

Q. Did they look like foreigners?

113 A. They looked like the same kind of people that had passed, as far as I could tell.

Q. When Gallagher asked you if you had seen any passing, what answer did you give him?

A. I think Mr. Runnell told him he had not seen any. That was pretty early in the morning.

Q. Did you tell the other one you had not seen any one?

A. I did that fellow that came along with the dogs on another occasion.

Q. How long had these strangers been gone before you saw Gallagher and the three coming back in the buggy—four men I believe it was?

A. An hour.

Q. Did they come in the same direction that the strangers went?

A. Yes, sir.

Q. Which way were they going when you saw them coming back?

A. Going towards Laurel Hill.

Q. Would that be in a direction leading to Lockhart or Florala?

A. Yes, sir.

Q. That would be going in the direction of Florala?

A. Yes, sir.

Q. Now, did either Atwell or Gallagher have a gun when you saw them?

A. If they did I did not see it.

Q. Did they have anything with them?

A. I never seen anything at all. The man who come along through the woods had a dog with him.

Q. The buggy crowd didn't have any dog.

A. Yes, sir; the dogs were with them going towards Laurel Hill.

Q. How many?

A. Only one dog.

Q. What sort of a dog?

A. One dog.

114 Q. A good sized dog?

A. Tolerable.

Q. Do you know the breed of bulls or blood hounds? How did this dog look?

A. He looked like a bull dog to me.

Q. Was it the same dog you had seen with the other man the day before?

A. That was the same day.

Q. And this dog was with the buggy that had two men in it, that you had seen pass the same day before?

A. Yes, sir.

Thereupon the Government recalled as a witness JOHN FOSTER, who testified as follows:

Direct Examination.

Q. This conversation that you had with Mr. Angelo in which he spoke of conditions, did you fix the time of that conversation?

A. What condition is that?

Q. You said this morning in your testimony that Angelo asked your opinion if it did not remind you of the war or the camps or something like that, and spoke of the conditions there?

A. Yes, sir.

Q. Now, I would like to have you fix as definitely as possbile, when that conversation occurred?

A. Just at the time that these parties had run away.

115 Q. Now, have you fixed the time when these parties ran away?

A. I do not know just exactly when it was; there was so many at different times; it was either after the first party ran away, and then there were others running away—they were running away nearly all the time.

Q. You do not know whether they run away of your own knowledge; you simply know that you missed them?

A. Yes, sir.

Q. You do not know whether they quit or were paid off, or you simply missed them?

A. I saw letters afterwards.

Q. You cannot state what was in the letters; state what you know of your own knowedge; where were you when this conversation orcurred?

A. Angelo and me?

Q. Yes.

A. Working.

Q. Where?

A. Right on one of these spurs.

Q. Who was present?

A. I don't know, all the men were working around; Angelo and I were talking about some particular case that had come back; people being brought back and several other things of that character, which were talked about among all the men.

Q. What time of day did that conversation take place?

A. I do not know exactly; the afternoon to the best of my knowledge.

A. Were you a witness before the Grand Jury convened by this Court?

A. Yes, sir.

116 Q. You knew the names of the parties you had mentioned to me at that time didn't you as having been whipped, and what occurred?

A. Having been whipped?

Q. Yes; you know the names of all the parties testified to then?

A. I have been remembering them all the time; I might remember one or two more little incidents since the case is brought up.

Q. Are you remembering any names that you didn't remember then?

A. I was not asked particularly to give names.

Q. I am asking if you remember any names now that you did not remember then?

A. If I had been asked I would remember—have said the same names.

Q. You knew the names then as well as now?

A. Yes, sir.

Defendants' counsel did then and there move to strike the testimony of the witness Foster so far as it relates to the statements made by one Angelo, upon the ground that such statements are hearsay testimony, and that no such conspiracy has been shown as to admit of his declaration to bind these defendants.

But the Court did then and there overrule said motion, to which ruling of the Court the defendants did then and there except.

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Thereupon the Government called as a witness one ARTHUR BUCKLEY, who, having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?

A. Arthur Buckley.

Q. Do you know Mr. Gallagher?

A. Yes, sir.

Q. Point him out?

A. Sitting right over there..

Q. Do you know Big Harry?

A. Yes, sir.

Q. Do you see him there?

A. Yes, sir.

Q. Point him out?

A. Right there.

Q. Do you know Archie Bellinger?

A. Yes, sir.

Q. Is that him with his finger up to his mouth?

A. Yes, sir.

Q. Where did you know all of these parties?

A. At the log camp of the Jackson Lumber Company.

Q. Do you know what time you got there at the log camps?

A. The second of July.

Q. Were you in the employ of that company?

A. Yes, sir.

Q. What kind of work were you doing?

A. Working—they first put me in the woods, then in the kitchen.

Q. Did you see much of Archie Bellinger in the kitchen?

A. Yes, sir.

118 Q. Did you see much of Harry Halverson around there?

A. Yes, sir.

Q. Now, did either one of these parties whip you while you were there around the kitchen?

A. Yes, sir.

Q. Which one?

A. Archie Bellinger.

Q. How many times?

A. Once.

Q. Did you see him whip anybody else?

A. No, sir.

Q. Around the kitchen?

A. No, sir.

Q. Where did Squarehead work while you were there?

A. He worked in the log camp.

Q. Now, then, the kitchen is situated at the place where you did the cooking?

A. About 25 feet from where all the cars are.

Q. There are two cars separate, one sleeping car, and kitchen, that is where nearly all the men slept?

A. No, sir; only where a few slept, and all the foremen slept.

Q. How did the foreman go around? Did you recognize Archie here as a foreman?

A. Yes, sir.

Q. Was Gallagher a foreman?

A. Yes, sir.

Q. Did you recognize Big Harry as a foreman?

A. No, sir.

Q. Do you know when Big Harry was watching the cars?

A. Yes, sir.

Q. About when; can you recall about how long you had been there when he went on?

119 A. No, sir.

Q. What did you see him doing when he was watching the cars?

A. I just saw him take his rifle around at halfpast six over to the cars—over to the new cars—him and Fagin.

Q. How did these bosses go around the camps there in the day time and at night? Did they carry anything?

A. Revolvers in their pockets.

Q. Did you ever see Bellinger with a revolver?

A. Every day I was there, night and day.

Q. Did you ever see Big Harry?

A. No, sir; I never seen him with that?

Q. Did you know one named Angelo?

A. Yes, sir.

Q. Did you ever see him whip anybody?

A. He whipped me once.

Q. What was that about?

A. About water, I did not give his gang some water.

Q. What did he whip you with?

A. With a big switch. A tree switch.

Q. Were you satisfied, did you like the conditions there at that time?

A. No, sir.

Q. Why did you stay there?

A. I stayed—I tried to run away, I could not get away—I was afraid.

Q. What made you afraid?

A. Well, on the first day I went up there I heard they had hounds to bring you back.

Q. Did you hear any of the bosses say so?

Defendants' counsel did then and there move the Court to strike out the answer of the witness to the preceding question, which motion was then and there granted. 120

Q. You say you know Harry, Angelo and Archie?

A. Yes, sir.

Q. Did you see any conversation between them as to what would be done with boys that ran away?

A. No, sir.

Q. Was anything said by them about anybody being brought back and if so what?

A. No, sir.

Q. You do not know of anybody being brought back?

A. No, sir; when they put the guards on Archie Bellinger says if anybody tries to run away, the first son of a bitch that tries to get away, to shoot him.

Q. Who said that?

A. Archie Bellinger.

Q. Who was he talking to?

A. He was talking to Harry and Fagin. There was a big crowd around the car. That was at night.

Q. And the instructions were if anybody ran away to shot them down?

A. Yes, sir.

Q. Do you know the watchman was around that car—a fellow generally employed for that purpose—was he and Harry on about the same time?

A. Lewis was there; he had a revolver, and Big Harry and Fagin had Winchesters.

Q. Have you ever seen them whip anybody beside yourself?

A. No, sir.

Q. Did you know Squarehead when his arms were sore?

A. Yes, sir.

121 Q. What was he doing then?

A. He was working while his arms were sore.

Q. Was he around the kitchen or around where you were working?

A. No, sir; I seen Gallagher chasing him in the field with a gun. I don't know why he was chasing him; he was running him down with his gun pointing it at him, but he never fired any shots.

Q. What sort of a gun was Gallagher's?

A. A pearl handle.

Q. Was it a rifle, a Winchester or a shotgun?

A. It was a revolver; I heard Lemater say one day—there was a fellow named Sam—

Counsel for defendants object to what the fellow named Sam stated.

Q. Do you know Lemater?

A. Yes, sir.

Q. Point him out?
A. Right there?
Q. Was that the man you heard him say—
A. I seen it—I heard him sav to that fellow go to work, and then the fellow did not want to go to work, he says he was sick, and Lemater says I will make you go, and he said I will throw you out of the window, and then he took hold of him by the neck and pants and Sam said some thing, and he let him go.
Q. Lemater had him by the neck?
A. Yes, sir.
Q. And Sam concluded to go to work?
A. Yes, sir.

Cross Examination.

Q. When did you first go to work for the Jackson Lumber Company?
122 A. The second of July.
Q. Where did you come from?
A. New York.
Q. You went there on the second of July?
A. Yes, sir.
Q. Did anybody come down with you?
A. Thirty-five besides me.
Q. How did you come?
A. By boat to Savannah, and Savannah come on the train to Lockhart.
Q. What are you—a Jew?
A. Italian.
Q. Have you ever sworn in Court before?
A. Yes, sir.
Q. I mean before the other day here; were you ever sworn in Court?
A. I swore this morning and in the other trial.
Q. Were you sworn before that?
A. No, sir.
Q. How long have you lived in New York?
A. Born and raised in New York.
Q. What religion were you brought up under, if any?
A. The Christian religion.
Q. Do you know anything—what church?
A. The Catholic Church.
Q. Have you ever been taught as to what would become of you after death if you should testify falsely?

A. Yes, sir.

Q. What?

A. You mean if I tell any lies?

Q. If you swore to a lie?

A. Yes, sir.

Q. What?

123 A. Would go to hell.

Do you regard an oath as binding upon you when it is administered by simply holding up your hand—you understand that to be binding upon you?

A. Yes, sir; I understand what that means, it means to tell the truth, and not to tell any lies.

Q. How old are you?

A. 18.

Q. Now, the first time you had any trouble yourself was with Bellinger?

A. Yes, sir.

Q. How long was that after you first arrived?

A. I could not tell you, I don't remember; it was in July, I remember that.

Q. What did the trouble arise about?

A. What did he whip me for?

Q. Yes.

A. I don't know, I think it was about some water. I would not give some of his men some water, and he says he was going to give me a new job, and he whipped me; he said he was going to give me a new job, and took me to the barn and raised me over the bench, and whips me.

Q. What were you engaged in before you came down here?

A. I was told I was going to Lockhart to work around lumber.

Q. I mean before you came down to Lockhart in New York?

A. Just come from Albany; I worked for the Humane Society.

Q. How long had you been in New York City?

A. About three or four days.

Q. You testified in this case before the other day when the men were on trial, didn't you?

A. In the other trial, yes, sir; I come up here and sat down and give my testimony just the same as I am
124 doing now.

Q. The time you were whipped by Angelo and the time you were whipped by Belinger were the only times?

A. Yes, sir. Those were the only times I got a whipping.

Q. Do you know whether anybody was present at the time of this treatment that you spoke of?

A. One was named Owell, he is one of the men that held me, and the other fellow, the harnessmaker.

Q. Who was the man who held you?

A. The barnkeeper—the fellow who had charge of the horses.

Q. What was his name?

A. I don't know his name, but it was something like Owell.

Q. Was that when Bellinger whipped you?

A. Yes, sir.

Q. And the time when Archie whipped you there was a big crowd there; do you know the name of any of them?

A. I know the name of Keller and another, a Jewish fellow there. I do not know his name. It is Jewish fellow; he saw me get whipped by Bellinger.

Q. Is he here?

A. Yes, sir; and he saw me get whipped by Bellinger.

Q. Did not Mr. Gallagher discharge you?

A. No, sir.

Q. Is it not a fact that he gave you orders to leave there and then you went somewhere else and got employment?

A. No, sir; when the consul was up there he was chasing me around all that time they drew me off; he didn't discharge me.

Q. What did you tell the consul.

A. No, I didn't talk to the consul at all; I was 25 feet away and he was going behind me, and when I came round over there, he says go over to Bill Toliver and help him swamp some; Bill Toliver is one of the company's
125 witnesses. He knew I was going to tell the consul.

Q. How did he know it?

A. I told him and I told the blacksmith that I was going to tell the consul, and he told me if I would not tell him they would give me clothes and money and give me a job.

Q. Who was that?

A. That was the blacksmith.

Thereupon defendants' counsel moved to strike out the foregoing testimony, which motion was then and there granted.

Q. No one of these men said anything to you about it did they?

A. No, sir.

Q. And no one of these men undertook to keep you away from the consul did they?

A. Yes, sir.

Q. Which one?

A. Archie Bellinger, he kept me away. He was running me around and keeping me away from the consul.

Q. The consul was there was he?

A. He was there, I heard he was the consul, and I was trying to talk to him, but they would not give me a chance. He knew I was going to tell the consul.

Q. Didn't you testify here the other day that you saw the consul?

A. No, sir.

Q. Didn't you testify the other day that you were spirited away so that you could not see the consul?

A. He was running me around to keep me from telling the consul, but I saw the consul. I was about 25 feet away from him.

Q. Then you had no talk with the consul at all?

A. No, sir. I could not get any chance.

126 Q. I ask you again, did you not testify the other day that you were spirited away to keep you from talking to the consul, didn't you testify to that?

A. Yes, sir; he was chasing me around.

Q. Didn't you testify the other day that they spirited you away so that you could not see the consul?

A. Yes, sir.

Q. You tesitfied to that?

A. Yes, sir.

Q. You testified that?

A. I says he was chasing me around so as to keep me from seeing the consul.

Q. Did you see the consul more than once?

A. I just saw him once.

Q. Didn't you testify that they sent you over to the turpentine camps to keep you from seeing him?

A. I saw him but did not talk to him.

Q. Didn't you testify that they sent you to the turpentine camps to keep you from seeing him?

A. Yes, sir.

Q. And didn't he come in here, and didn't you identify him —he identified you—as one of the persons that did see him?

A. He says there was five, he said he seen Haas and Herman, and I seen him, but I didn't talk to him. I saw him, but I never talked to him, though I tried to talk to him. But I never.

Q. What effort did you make?

A. No effort, I didn't get any nearer than 25 feet.

Q. What was the matter?

A. Archie Bellinger was chasing me and telling me to go to the hospital.

Q. Chasing you how?

127 A. Telling me to go over to the hospital; I was not working that day; this was in the afternoon, and he knew I was not working, and while the consul was there he told me to go to the hospital and help Stoney fix up the beds there; then I came around the other way, and then he says go ahead and help Bill Tolliver swamp.

Q. Did you work any more where Bellinger was after he struck you?

A. Yes, sir; until the 28th day of July, the day the consul came there, and then after that they took me over to the turpentine camp.

Q. The whipping occurred just at what date?

A. I do not know.

Q. You worked there until the 28th of July, the whipping occurred three days, or how long before?

A. I could not tell you, I don't know. I cannot remember the dates.

Re-Direct Examination.

Q. You left the same day the consul was there?

A. Yes, sir. Mr. Newlander came over in the buggy and took me; he came over in the buggy and told us to get two axes, and he brought us to Lemater, and Lemater give us to Huggins.

Q. That was all on the same day?

Q. Yes, sir; that happened about six o'clock. Foster seen me in the buggy that day.

Q. How far from the turpentine camp where Mr. Newlander carried you to from the Lockhart camp?

A. Newlander came to the log camp and took us to Lemater's quarters to the commissary; there was a little turpentine quarters there, and then from there he took us seven miles away to the turpentine quarters.

Q. From Lemater's quarters?

128 A. Yes, sir.

Q. Was that your discharge you got from Archie Bellinger—merely transferred you on the same day?

A. He didn't say he discharged us, but Lemater said he wanted us a few weeks to saw down some posts—say you can work boys, work by the day.

Q. You say Lemater transferred you to somebody else?

A. No, sir; to Huggins, who was working for Lemater, and he told Huggins to take us to some quarters, to Johnson's quarters.

Q. Lemater sent you by Huggins to Johnson's quarters?

A. Yes, sir; the same day the consul was up there.

Cross-Examination.

Q. You testified before the grand jury?

A. Yes, sir.

Q. You knew the names of all the parties then that you now know, didn't you, that you have testified in reference to?

A. I know them now.

Q. You knew them then the same as now?

A. Yes, sir; I didn't know Newlander's name, I could not think of it, but when I thought of it I knew the name.

Q. You knew them all except Newlander?

A. I knew Sandor, and Archie Bellinger, and everybody.

Re-Direct Examination.

Q. Did you know Angelo?

A. Yes, sir; I know him?

Q. Did you know any one named—what other name did he go by?

A. No, sir; that is the only name I knew.

Q. You could not think of Newlander's name then? 129

A. The other day I could not think of his name. Sometimes I can think of it.

Counsel for defendants did then and there move to strike the testimony of the foregoing witness as to declarations made by any one of the defendants for any act or as to any threats upon the ground that it is hearsay, irrelevant and immaterial, and because no conspiracy has been established.

But the Court did then and there overrule the said motion, to which ruling of the Court the defendants did then and there except.

The Government hereupon called as a witness one MANUEL JORDSMAN, who, having been duly sworn through the interpreter, testified as follows:

James Jadrievic, Interpreter.

Direct Examination.

The following questions were propounded by defendants' counsel:

Q. What is your nationality?
A. Bulgarian.
Q. Have you ever been sworn in the trial of any cause in Bulgaria?
A. He say, never.
Q. Have you ever seen any person sworn in a Court in Bulgaria?
A. He say never was in his life in a court room in Bulgaria.
Q. What is your religion?
A. Episcopalian.
130 Q. Do you regard an oath as binding upon your conscience which is administered in the form of the one just now put?

(Interpreter does not understand.)

Q. Is the oath in the form in which it has been given to you binding upon your conscience?

(Interpreter does not understand the question.)

Q. Do you consider the oath which you have just taken as binding upon your conscience?
A. He is willing to say all right what it was.
Q. I will put it in another way. If you should violate this oath which has been administered to you, and fail to tell the truth, do you feel that any consequence would be visited upon you after death?

A. He say he never say anything except what is right to save his neck.

Q. I will ask you this question: You are under oath—I want to test his qualifications—do you thoroughly understand the language of the witness?

A. Yes, sir.

Q. Now, I am going to propound this question to the witness: Do you thoroughly understand the language of the interpreter? Ask him that.

A. He says yes.

Q. If you should swear to a lie under the oath which has been administered, do you feel that after death any consequence would be visited upon you, if you should swear falsely under the oath in the form in which it has been given to you?

A. He says he only say what is right.

Q. Do you believe in a future state of punishment?

A. He says he is willing to be punished if he say what is wrong.

Q. Do you believe that you will be punished after death if you do wrong?

131 A. He says that he believes if he says something wrong he will be punished. He believes in that.

Q. Here or hereafter?

A. He say any time that you find it was wrong you will be punished.

Q. Do you believe there is a hell?

A. He says he believes it.

Q. Do you believe that if you swear falsely to what is untrue that you would be punished after death?

A. He says that if he says something wrong he will go to hell.

Direct Examination.

Q. Ask the witness if he ever worked for the Jackson Lumber Company?

A. Yes, sir.

Q. Ask him when he began working for the Jackson Lumber Company?

A. He says he left New York on the 21st day of June.

Q. Ask him where he went from New York?

A. He says he gone to Lockhart, Alabama..

Q. When did he got to Lockhart?

A. He says, he don't know exactly; four or five days after he left New York.

Q. Ask him if he knows Mr. Gallagher?

A. Yes, sir.

Q. Where is he?

A. Sitting over there.

Q. Ask him if he saw Mr. Gallagher on the way down from New York?

A He says he never saw him in New York except at Savanah, when he got off the ship.

Q. Did Mr. Gallagher accompany you from there to Lockhart? 132

A. He says yes, sir.

Q. How many was in his party?

A. He says he don't know exactly; he thinks about twenty men.

Q. What time of day did you get to Lockhart, day or night?

A. He says come in night time, but he don't know what hour it was.

Q. Ask him what he was to do at Lockhart?

A. He say they told him he was to go to work in a saw mill.

Q. Ask him what his wages were to be; what he was to receive?

A. Promised to pay two dollars a day, for eight hour work.

Q. Ask him if he had a contract, a written contract?

A. Yes, sir; he says he had a contract, but he don't know what was in it.

Q. Ask him where his contract is if he had one?

A. He says after he came here they took the contract away from him. I asked him who took it, and he say in the office.

Q. In what office?

A. He says it was in the car.

Q. At what place?

A. In the woods in the car office.

Q. At the Jackson Lumber Company camp?

A. Yes, sir.

Q. Ask him what he did the first day?

Counsel for defendants suggested that the Government counsel should propound the question directly to the witness, in order that the defendants' counsel might know better when to object to the question.

The Court:

You will change the form of questions.

Q. What did you do the first day you arrived at the Jackson Lumber Company Camp?

133 A. I asked him now what he do the first day he come to the Jackson Lumber Company Camp, and he replied, I go to look around, and come back, and he say Mr. Gallagher come with a revolver and beat him.

Q. What did Mr. Galagher do to you there, tell us fully.

A. He says he come to him with a revolver in his hand, and beat him, and put him on the ground and beat him and kicked him on his feet and legs.

Q. Where did this occur?

A. In the car.

Q. What place on your body did Mr. Gallagher kick and beat you?

(Witness here shows to the jury the condition of his leg, by removing the outer covering.)

A. He say Mr. Gallagher, after beating him with a revolver and kicking him with his feet on his leg, and after kicking him he was not able to walk any more, and it is sore today.

Q. What became of you after that; what did you do after that?

A. He say that after he was bad beaten he never was able to work. Only cry and stay there, and he got worse and got the fever.

Q. Did you say anything to Mr. Gallagher while he was beating you?

A. He say he never told him nothing. He only cried.

Q. Did you work for the Jackson Lumber Company after that time?

A. He say that he was working after that; he was trying to do the best he can, because he could not go away. He have no money.

Q. How long did you work after this beating?

A. Twenty days about.

Q. Why did you stop working twenty days after?

A. He say he stopped work because his leg swelled up, and come fever on him, and he never able to work any
134 more.

Q. Where had you been when Mr. Gallagher commenced to beat you?

A. He say he was close to the car office when he started to beating him, and he pulled him in the car office and beat him right there in the car office; and he say that he saw lots of people around, and some was crying how Mr. Gallagher beaten him.

Q. What time of day was it that this beating took place?

A. 12 o'clock.

Defendants' counsel did then and there object to the testimony as being irrelevant and immaterial, and not in any way connected with these defendants, and being testimony showing a mere personal combat, if anything; but the Court did then and there overrule such objection, to which ruling of the Court the defendants did then and there except.

Q. What did Mr. Gallagher beat you for?

A. He say he don't know.

Q. Who paid your way down to Lockhart?

A. He says he thinks the company.

Cross-Examination.

Q. Do you know of your own knowledge who did pay your passage?

A. He say yes.

Q. Did you see the transportation paid for?

A. He says he know nothing about it; he says he knows his passage from New York to Lockhart was paid for; that is all he knows.

Q. You simply know that your passage was paid without any actual knowledge as to who paid it?

A. He says he knows nothing about it; got him in the office there at New York and paid it, and he go with everybody else.

135 Q. Where were you at the time Mr. Gallagher assaulted you?

A. He says first time he assaulted him in a car.

Q. Were you or not on the platform of the car at the time Mr. Gallagher first assaulted you?

A. He says he was close to the car and another—Mr. Gallagher comes on the platform of the car and pulled his revolver and come down to him and started to beat him right there, and pulled him up to the platform, and from the platform into the car.

Q. Were you or not upon the ground at the time that Mr. Gallagher first took hold of you?

A. First struck him on the ground and pulled him up on the platform to the office.

Q. What had you been engaged in in the forenoon of that day?

A. No, sir; that day never gone working; went working next day.

Q. What had you been doing or where had you been in the forenoon of the day that Mr. Gallagher assaulted you?

A. He says that in the morning he was gone to the woods to look at the logs made to pass a little time.

Q. What time did you get back to the camp or cars?

A. He says it was close to 12 o'clock that he came back.

Q. How far from these cars did you go that morning loking at the timber?

A. He says he don't know exactly how long he was away from the car; he was walking fast and come back; he don't know the distance.

Q. Did you walk that distance there and back?

A. Yes, sir; he was walking.

Q. Was anybody with you any part of the time?

A. Yes, sir; two together there was.

Q. Yourself and another?

A. He says another one.

Q. Himself and another?

A. Yes, sir.

136 Q. Who was the other one?

A. He says that he is not here around. He don't know his name; he was working there.

Q. Was it one of the laborers?

A. Yes, sir; he was working there.

Q. One of the laboring men?

A. Yes, sir.

Q. What time did you leave the cars that morning to go into the woods?

A. He say he don't know exactly what time it was.

Q. About how long was the time between the difficulty—about, not exactly—between the time you left the cars and the time you returned?

A. He says he leaves at seven o'clock and comes back at twelve.

A. Did or did not Mr. Gallagher at the time he assaulted you make any remarks?

A. He say Mr. Gallagher come and showed him his gun and he say me not got no money, me no got no money.

Q. Could you understand English at that time?

A. He says that he knows nothing about the English language, only gone and worked.

A. The words "gone" and "worked" are the only words in the English language that you understand?

A. That is all he say. Mr. Galagher come and say you gone, and he say me no gone, me no got no money.

Q. Did you know at that time what the meaning of the English word "you" is?

A. He says the same thing again; he says you gone, me got no got no money.

Q. Did you understand by that remark that Mr. Gallagher was ordering you to leave?

A. He say the same thing again, I cannot get anything else from him.

137 Q. When did that sore upon your leg first appear?

A. He says he was feeling all right, and he says the sore on his leg was keeping him from working, and there come on a swelling.

Q. Did you notice any abrasion of the skin on the same day that you were kicked?

A. He say he never see no skin only it was blue.

Q. What were you engaged in during the twenty days you remained there and worked after this difficulty?

A. In track work, fixing the road.

Q. Were you on the car when it stopped at Fort Valley, Georgia?

Government's attorney did then and there object to the question and same was withdrawn.

Q. Did you testify before the commissioner sometime in August last?

A. Yes, sir.

Q. Did you at that time produce to the commissioner the contract you had?

A. He says he never give it here; he give it to the office.

Q. Did you deliver to the commissioner during last August when you were testifying any paper?

A. He says that he has given some kind of paper here, but he does not know; he cannot read nor write, and don't know what kind of paper he gave to the commissioner.

Q. Where did you bring that paper from that you gave to the commissioner?

A. He says he thinks the paper what he gave to the United States Commissioner that he got in New York.

Q. Did you understand by that that that was the contract?

A. He says he don't know what it was.

Q. How do you know it was the contract that you left in the office?

A. He says he was there in the office and give it to him his contract, and he says that is what you get for
138 your money.

Q. Was that the same kind of paper or was it the same paper that you gave to the commissioner?

A. He says he received two kinds of paper in New York. He give one to the office and one here to the commissioner. He don't know which he give here or there.

Q. Do you know whether the papers were the same kind of papers?

A. He says one was a paper looked like red, and one white, and they just told him that one was for money, and one for contracts, and says you go to receive a dollar, and he says he has never received his dollar?

Q. Which one did you give to the commissioner here last August. The white one or the red one?

A. The red one.

Re-Direct Examination.

Q. Do you know Rudolph Lanninger?

A. He say yes, sir.

Q. Did you come down from New York to Lockhart accompanying him?

A. Yes, sir; he say he come to Savannah and from Savanah Mr. Gallagher took them.

Re-Cross Examination.

Q. Do you know a man by the name of Albert Danish?

A. Yes, sir; he was in company with him from New York.

Q. Is he a Bulgarian?

A. No, sir.

Q. He speaks the same language as you do does he not?

A. He say, no, sir.

Q. How old are you?

A. Thirty years.

139 Q. How long have you been in this country?

A. One year.

Q. Did you come directly from Bulgaria to this country?

A. Yes, sir; directly to New York.

Q. Were any persons with you at these camps who spoke the Bulgarian language?

A. He says only one man; he used to understand him a little bit.

Thereupon the defendants' counsel propounded the following questions to the interpreter:

Q. What is your nationality?

A. Austria.

Q. Were you ever sworn in Court in Austria?

A. No, sir; I have never been in a court room before in my life.

Q. Do you profess any of religion?

A. Yes, sir; I am a Catholic.

Q. You regard the form of oath as administered to you as binding upon your conscience?

A. Yes, sir.

Thereupon the Government called as witness one CHAS. HAAS, who, having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?

140 A. Charles Haas.

Q. What is your nationality?

A. Jew.

Q. Where were you born?

A. In the old country.

Q. How long have you been in this country?

A. Two years.

Q. Where did you live in this country after you came from the old country?

A. New York.

Q. When did you leave New York?

A. About six months ago.

Q. What month?

A. I do not remember the month.

Q. How did you come to leave New York?

A. I was going by the office and I seen the papers can get a job in the office; I was looking for a job and they told me I could get a job, and sent me to Lockhart.

Q. Did you ask at that place?

A. Yes, sir; I asked him where it is, and they say Lockhart.

Q. Did you leave New York the same day? When did you leave New York?

A. The same day I asked about it.

Q. Do you know Newlander?

A. Yes, sir.

Q. Can you point him out here?

A. Yes, sir; sitting right over there.

Q. Was he in New York at the time?

A. I didn't see him.

Q. Did you see him aboard the ship?

A. No, I didn't see him.

Q. Where did you leave the ship?

141 A. Three o'clock.

Q. Did you come from New York and to where?

A. Savannah.

Q. You left the ship in Savannah?

A. Yes, sir.

Q. Did you meet anybody there representing the Jackson Lumber Company?

A. Yes, sir.

Q. Who?

A. Mr. Gallagher.

Q. Do you know Mr. Gallagher?

A. Yes, sir; he is sitting right there.

Q. That is the man that met you in Savannah?

A. Yes, sir.

Q. Where were you going to from Savannah?

A. They took me up on the train; I cannot remember the country.

Q. Did your train stop anywhere?

A. Yes, sir.

Q. Do you know the name of the place?

A. No, sir.

Q. What did you do where the train stopped?

A. We come over there at 5 o'clock, and he says we will give you supper; then he asked the follows how it was—

Q. Don't tell what the fellows told you—did you leave the train there and then?

A. Yes, sir.

Q. How far did you go?

A. Not far, about half an hour.

Q. Did any others leave with you?

A. Yes, sir.

142 Q. How many?

A. Eleven of us.

Q. Do you know any of them, the names of any of them?

A. Yes, sir.

Q. Give us the names of them?

A. Nathan Scott, Louie Docks, a fellow named Charlie—

Q. Do you know Greenfield?

A. Yes, sir.

Q. Was he one of them?

A. Yes, sir.

Q. Who carried you back to the car?

A. Two sheriffs.

Q. Did they stop you; were you going away when you were stopped by them?

A. Yes, sir; we were sitting down and there come a man, two mens in a wagon, and one come down and says I want you to go with me, and we says, yes, sir, we will go.

Q. You went where?

A. Back to the car.

Q. Did you see Mr. Gallagher at the car?

A. Yes, sir; it was in the morning.

Q. Before day—night time or day time?

A. It was night when we go away, but get back in the morning.

Q. Where did you go from there; who put you in the car?

A. Two mens bring us back, and said got to get some breakfast, and so Gallagher carried us over and gave us breakfast.

Q. Did the sheriffs have any guns?

A. Yes, sir; two guns; one sheriff had two guns.

Defendants' counsel did then and there object to the testimony of this witness as to acts and statements of the sheriffs upon the ground that what the sheriffs might have told them, or any acts of the sheriffs, could not bind the defendants.

143 But the Court did then and there overrule said objection, to which ruling of the Court the defendants' counsel did then and there except.

Q. When they brought you back to the car did you find Mr. Gallagher there?

A. Yes, sir.

Q. Did the sheriffs take you up to the car?

A. No.

Q. What did they do with you?

A. Carried us up to the car and Gallagher said give us breakfast. One policeman was sitting by the car.

Q. Was not there other boys that left at the same time you did from that car?

A. Yes, sir; eleven boys.

Q. That left with you?

A. Yes, sir.

Q. Was there any other party of boys—a different party—

A. That fellow Charlie—he went off with another crowd? He got with the same crowd.

Q. Do you know William Keller?

A. I know who you mean.

Q. And John Smith?

A. Yes, sir; I know that.

Q. Were they with your party?

A. No, they got away before we did.

Q. Where did you go to after you got back to the car and the car left?

A. To Lockhart.

Q. What time did you arrive at the camps near Lockhart?

A. It was in the night.

Q. Did you go to work the next day?

A. No.

144 Q. Were you at the dinner car the next day, Monday, about noon?

A. Yes, sir.

Q. Did you see any occurrence, any fight there about that time?

A. I saw Gallagher hit the Hungarian.

Q. State it slowly.

A. I saw him; he bring him in—put him in a wagon, holding him and hit him, and the Bulgarian hollowed, no got money—no got money; and Gallagher let him alone, and said go get your dinner.

Q. Where were you?

A. I was right by the office door.

Q. Were you in or outside of the car?

A. I was inside by the door, and next to the office, and I saw Gallagher hit him, and he says, no got money, no got money.

Q. Did the man go and get dinner?

A. No, sir.

Q. What was the first act you saw Gallagher do?

A. I see how he bring him in and hit him.

Q. Where did you first see Gallagher and the Bulgarian —in the car or outside?

A. In the car.

Q. Were you at dinner at the time?

A. No, I was there, I had my dinner already; I was outside.

Q. You were not on the platform of the cars, but clear out from the car—where were you?

A. On the other side of the car.

Q. Is there any platform there raised plank around the car?

A. Plank on the other side where you get check.

Q. What you saw of the difficulty was in the car, in the office car?

A. Yes, sir.

145 Q. Did Mr. Gallagher have anything in his hand?

A. He had a gun.

Q. A gun?

A. Yes, sir.

Q. Now, how long did you work around this camp?

A. Four and a half months.

Q. Did you work at the lumber camps and the turpentine camps?

A. Got to Lockhart, stayed there two hours, and come 9 o'clock; didn't want to give no supper because come too late.

Q. Who was your boss at the turpentine camp?

A. Lemater.

Q. Did Lemater work you men or somebody else?

A. Somebody else was boss of the men.

Q. Do you know that Lemater was ever a boss man?

A. Yes, sir.

Q. Who was the last boss you had around your work?

A. Three or four mens.

Q. Did those men carry anything?

A. No; I did not see them; there was one foreman, a little fellow, had a gun all the time?

Q. Do you know his name?

A. No.

Q. Did you know Archie Bellinger?

A. Yes, sir.

Q. Where is he?

A. He is sitting there.

Q. Do you know Harry Halverson?

A. He is sitting over there.

Q. Do you know Sandor?

A. No.

146 Q. Were you whipped while you were at work at the turpentine camp?

A. No.

Q. Where were you whipped, if you were whipped at all?

A. When I was in the log camp.

Q. Who whipped you?

A. The foreman hit me.

Q. What foreman?

A. Angelo and the other foreman, Fagin.

Q. Do you know any other name for Angelo?

A. No.

Q. How many times did he whip you?

A. He hit me every day; he hit me, and say—you, God damn Jew; you God damn Jew.

Q. Did you see anybody else whipped while you were in the log camp?

A. Yes, sir.

Q. Who?

A. Squarehead.

Q. How many times?

A. He hit him three or four times a day.

Q. What did he hit him with?

A. Stick or anything.

Q. Who was hitting him?

A. Angelo.

Q. Did you see anybody else whipped about this time while you were working at the log camp?

A. Fagin hit Squarehead, too.

Q. Did you work around the kitchen any, where they did the cooking at the log camp?

A. At the turpentine camp, a couple of days in the kitchen.

Q. Did Arthur Buckley work there at that time—do you know a when a man went to the camps there called the consul—did you see him?

147 A. Yes, sir; spoke to him.

Q. Who was present at the time?

A. Don't know what "present" means?

Q. Who was around there?

A. All the working men was around—it was dinner time.

Q. Who was with you at the time the consul was there?

A. Squarehead was there, and it was dinner time, and he rung the bell and the consul spoke to me.

Q. Do you know what other boys were with you, which of the boys was there when the consul spoke to you?

A. I cannot remember, which ones—all the working men.

Q. Was there more than you present at the time you were talking with the consul; did you see Angelo anywhere there?

A. Yes, sir; the consul was standing on this side, and Angelo was standing right behind him.

Q. Did you make any complaint to the consul?

A. He asked me how I got treated, and he says, did anybody hit you? I did not want to tell him because Angelo hit me again.

Q. Do you know whether Angelo had whipped anybody for trying to tell the consul?

A. The old man was going to the office and going to tell him, so he saw how Angelo hit him again.

Q. Where did you sleep around the camp?

A. In the car.

Q. Did you see any nightwatchman around the cars?

A. Yes, sir.

Q. While you were there?

A. Yes, sir.

Q. Do you know the names of any of them?

A. I know the names where I was sleeping,; I know a watchman come around with a lamp looking inside to see if everybody was in.

148 Q. Which one was there?

A. That was the watchman; I don't see him here now.

Q. Did you see Big Harry there?

A. He was watchman over there a couple of times, but I didn't sleep in that car where he was watchman; but I saw him come out every morning with a big gun.

Q. While you were working at the lumber camps, did you know any of the boys that had run away or escaped or disappeared that you knew? Did you see any boys brought back?

A. Brought back three fellows.

Q. Do you know who it was brought them back?

A. No, but I saw them come back.

Q. Do you know whether they were brought back or not? Was anybody with them?

A. Didn't see anybody with them. Brought back from Lockhart; got them at Lockhart, and brought them back.

Q. When did you leave the camps?

A. Five weeks ago.

Q. Did you attempt to leave any time yourself? Did you ever try to run away?

A. I was afraid to leave.

Q. Why?

A. Because I saw him hit the Bulgarian and Gallagher says, I will fix you for going away.

Q. Do you know what that guard was walking around the car for with a lantern? Do you know what he was looking around for?

A. To see if everybody was inside. To see that nobody got away.

Cross-Examination.

Q. What day of the week did you arrive at the log camps of the Jackson Lumber Company?

149 A. Don't hear what you said.

Q. What day of the week did you arrive at the log camps of the Jackson Lumber Company?

A. Cannot remember the day.

Q. You don't remember the day of the week?

A. No.

Q. Do you remember the day of the month?

A. It was in July; don't remember the day.

Q. How many came down with you?

A. Twenty-seven of them, I think.

Q. What day did you arrive at the camps of the Jackson Lumber Company?

A. Don't know what you mean by "arrive."

Q. What time did you get there?

A. At night.

Q. About what time of night?

A. Don't know what time.

Q. Now, what employment were you engaged in when you first went to work?

A. Turpentine camp.

Q. Under whom were you working?

A. First time working in the turpentine camp.

Q. What man had charge of that?

A. Lemater.

Q. Mr. Lemater?

A. Yes, sir.

Q. What did you do there?

A. I was working over there.

Q. What kind of work?

A. Chipping.

Q. How long did you work there?

A. About six days.

Q. Where did you go from there?

A. To Gallagher's camp.

Q. How far is the log camp from the turpentine works?

A. It takes about an hour or hour and a half to go there.

Q. Ordinary walking?

A. Hour or hour and a half.

Q. How came you to go from the turpentine works to the log camps?

A. Because got to leave work to go home half past seven.

Q. I mean how came you to shift or change your work from the turpentine works to the log camps?

A. Because I didn't want to work so much.

Q. Did you apply to anybody to change positions?

A. Apply?

Q. Did you get the consent of anybody to change positions?

A. Don't understand.

Q. Did you ask anybody if you might?

A. Yes, sir; I told him I didn't want to go back to work there; I wanted to go back to Gallagher's camp to get work—I didn't want to work over there, so Gallagher give us other work.

Q. Mr. Lemater had charge of you at the turpentine camps? Now did you go to Mr. Lemater and tell him you were going to leave.

A. No.

Q. Then when you did leave did you go to anybody and ask them for employment? Did he pay you off when you left him?

A. No.

Q. Did you have a settlement with him—did you have an arrangement of accounts with him?

A. The foreman kept the time.

Q. Did he furnish you with your time?

A. Yes, sir.

Q. He gave you evidence of what was due you did he?

A. Yes, sir.

151 Q. And then you left there? Then did you ask for employment from Mr. Gallagher?

A. Employment?

Q. Work?

A. Yes, sir; I asked him—

Q. Then you went to Mr. Gallagher, and asked him for work?

A. Yes, sir.

Q. Did he give you work?

A. Yes, sir.

Q. What employment were you engaged in—what work?

A. Rails.

Q. Laying rails?

A. Yes, sir.

Q. How long did you work at that?

A. I was working over there a month and a half.

A. Under whom were you working when you were over here—what boss?

A. When I was living at the log camp I was working at Lockhart.

Q. Wait a moment, we will get to Lockhart after a while. At the log camp what boss were you working under?

A. Angelo.

Q. Did you work under Angelo all the time that you worked at the log camp?

A. Not all the time; I worked under another foreman named Fagin.

Q. Which one did you work under first, Fagin or Angelo?

A. First sent me to Angelo.

Q. How long did you work under Angelo before you went to work under Fagin?

A. I was like this. I went to work one time and could not do the work, and I was sick, and Angelo sends me to him and says, you go home and get rest, and Gallagher sees me going home and he stops me and takes me off the engine, and says why are you going home? Says I will make you work all right, and he sends me to work for Fagin.

152 Q. You told him you didn't want to work under Angelo?

A. No; I didn't tell him; I told him because I could not do the work, because I am sick; I have got to rest a day; and he says I will make you work all right.

Q. Did you tell Mr. Gallagher that Angelo had been cruel to you?

A. No, sir.

Q. How long had you been at work for Angelo at that time?

A. About three weeks, I think.

Q. You had been at work for Angelo about three weeks?

A. Yes, sir.

Q. And then you left Mr. Angelo and started—

A. I didn't leave, Mr. Gallagher make me leave him; I just could not do the work one day, so I wanted to rest, and he says I will make you work, and sends me to Fagin.

Q. You said just now you were already leaving when he met you on the engine or the train.

A. Not leaving. I leave it because I could not do the work one day.

Q. You were going away from the employment for one day then?

A. Yes, sir.

Q. Where did you meet Gallagher?

A. I was going home, and he was coming with the engine, and took me up on the engine, and says what is the trouble, and I says I can't do the work today. I will go to work tomorrow. And he says I will make you work all right.

Q. Did you ever tell Mr. Gallagher at any time that Angelo didn't treat you all right?

A. I didn't say anything to him at all.

Q. How long had you been at work for Angelo at that time?

A. Three weeks.

Q. How long did you work under Fagin?

153 A. I cannot remember, but I worked a couple of days with him, and then I was going back to Angelo, because I didn't want to work with him.

Q. What kind of work did you do with Fagin?

A. Make fire and go saw down the trees.

Q. Then you left Fagin because you say you didn't want to work there?

A. Because he hit me.

Q. Fagin hit you?

A. Yes, sir.

Q. Why did he hit you?

A. Why, don't know why he hit me with foot and everything—don't know why.

Q. Fagin sent you away from there, didn't he?

A. No.

Q. Then you went to work for Angelo?

A. Yes, sir.

Q. How long did you work for him after you went back?

A. Until paid.

Q. How long was that, about?

A. Cannot remember how long.

Q. Well, you can give us some idea probably?

A. About two weeks, until pay day.

Q. When pay day came you left?

A. I didn't leave there; I left because I am going to work at Lockhart; because I could not work over there; Angelo hit me and Fagin hit me.

Q. You could not work there under either foremen and then you went to Lockhart?

A. Yes, sir.

Q. How far is that from where you had been employed before?

A. An hour and a half.

154 Q. About five or six miles?

A. I don't know miles.

Q. Now, then when you got to Lockhart, what did you do there?

A. I was working in saw mill.

Q. What boss were you working under?

A. Cannot tell you what boss; this man sent me to him to go to work.

Q. That man?

A. Yes, sir.

Q. Where was he employed?

A. He was in Lockhart in the office.

Q. Did you go to him for employment—this man Sandor?

A. Yes, sir; I asked him for work.

Q. And he then sent you down to the mill, did he?

A. Yes, sir.

Q. How long did you work there in the mill?

A. Five weeks or a month.

Q. You don't know what boss you worked under there?

A. No, sir.

Q. Then what did you do?

A. Then I left that to go back to work under Lemater.

Q. Did you get pay for the time you worked at the saw mill?

A. Yes, sir.

Q. Didn't you go from there back to Mr. Gallagher and ask Mr. Gallagher to give you employment, and he refused to do it?

A. I saw Gallagher at Lockhart and told him I could not work over there and he tells me I go back and see Archie; I told Gallagher I want him to give me work, and he says I can give you no work, and so I went to Lemater, and he give me work.

Q. You went to Lemater and asked him for work and he gave you work?

155 A. Yes, sir.

Q. How long did you work for Mr. Lemater?

A. Three weeks and then I left the place.

Q. Didn't they tell you after you had attempted to work for the various men, and at various employments, didn't they tell you that they had no use for you? Didn't Mr. Gallagher tell you that?

A. No, he never told me that.

Q. Didn't Archie Bellinger tell you that?

A. What?

Q. To get away from there, you would not work for nothing?

A. Yes, sir.

Q. And didn't you tell Mr. Gallagher that they would not give you any work?

A. Who?

Q. Didn't you tell Mr. Gallagher that?

A. I was in Lockhart, and I see Gallagher, and I says I want some work, and he says I can give you work, and Archie told Gallagher he didn't want to give me no work.

Q. Didn't you go to Mr. Gallagher and tell Mr. Gallagher that you could not get employment, and that you were hungry, and could not get anything to eat, and didn't he send you out to get something to eat?

A. No, said nothing about it; I asked him for a job, and he says I will give you work.

Q. Now, the various places where you worked were separate employers—under separate bosses entirely, independent of the other?

A. Yes, sir.

Q. And you would stay a while with one, and when you finished there you would simply go to the other party to get employment.

A. I don't know what employment is.

Q. After you settled under one man or boss then you were free, were you not?

156 A. Yes, sir.

Q. And after you had settled up and finished with him you were free to go where you pleased, and then you would go to some other boss, and ask him for employment, wouldn't you? I mean work when I say employment?

A. When I leave Lockhart I asked Mr. Gallagher for work.

Q You went down to the mill and asked for work at Lockhart?

A. No. sir.

Q. Didn't you go and ask Sandor for work?

A. I asked him one time, the first time I go to Lockhart, asked him for work.

Q. Didn't you ask Mr. Gallagher for work?

A. I told him—I asked him if I could not go back to the camp to work, and he says, yes, I will give you work at the camp, and he didn't.

Q. How long did you lie around the store at Lockhart before you went back to work after you had quit work at Lockhart?

A. I don't know how long.

Q. Well, give me some idea?

A. About two days.

Q. Didn't you stay around Lockhart idle for ten days, and were you not told when hanging around there doing nothing—you were not working any where—and to get out of there?

A. No.

Q. Didn't Mr. Sandor tell you that?

A. No.

Q. How long have you been in America?

A. Two years.

Q. Where did you come from?

A. The old country.

Q. What old country?

A. Galitzia.

157 Q. You are a Jew, are you not?

A. Yes, sir.

Q. You are not a Christian?

A. No, I am a Jew.

Q. Now, then, you say that Angelo whipped you every day while you were there?

A. Yes, sir; he hit me sometimes three times a day, too.

Q. Do you know anybody that was present that you can name that was there and saw him whip you?

A. Yes, sir.

Q. Who?

A. Foster saw me whipped there. He was working at the same time. And Nathan Scott saw me and a fellow named Docks saw me whipped.

Q. Was that John Foster?

A. John Foster, Nathan Scott and Lewis Docks.

Q. What were you whipped about?

A. Because he Italian; he didn't like no Jew; he say all the time God with the Jew, and says God damn the Jew, God damn the Jew, because he was Italian.

Q. Whipped you because you were a Jew and he didn't like you?

A. Yes, sir.

Q. You say you saw some men brought back to these camps?

A. Yes, sir.

Q. Now then, locate as near as you can the time you saw these men brought back?

A. Three fellows I saw them brought back.

Q. You saw three fellows brought back?

A. I saw them come back about six o'clock; I saw them come back; I know they got away in the morning.

Q. Did you ever see those men there before you saw them brought back that afternoon?

A. Which men?

158 Q. These men that you saw brought back?

A. No, but I saw them come back at night.

Q. Had you ever seen them before you saw them come there that night?

A. I see them all the time; they came same time with me from New York.

Q. Who were they?

A. I don't know their names.

Q. Have you seen them here?

A. Yes, sir; outside.

Q. Three fellows here outside?

A. Yes, sir.

Q. When was that?

A. Cannot remember.

Q. Do you remember how long it was after you got there?

A. No, sir.

Q. How did they get back—walk, ride or how?

A. On foot?

Q. Anybody with them?

A. No, didn't see anybody with them.

Q. They came there themselves without anybody with them?

A. I didn't see anybody with them.

Q. How long have you been here in Pensacola continuously this last time; where have you stopped ever since you have been in Pensacola?

A. Boarding house.

Q. Did any of those witnesses here outside there, and sworn with you the other morning stop at that boarding house?

A. Yes, sir.

Q. Which one?

A. Two fellows.

Q. Which two?

159 A. Nathan Scott and Lewis Docks stopped at the same place.

Q. They have been stopping with you all the time?

A. Only at night?

Q. You say all those men you saw come back are out there in the hall waiting?

A. Yes, sir.

Q. Now, you have been knowing those men how long?

A. I know them since they come with me on the boat from New York.

Q. And you don't know their names?

A. No.

Q. You never heard any names given to them?

A. I heard names, but I don't know it now.

Q. This diagram illustrates the dining car, and that is where the office of Mr. Gallagher is—(diagram is here shown to witness)—which one of these places was it where you saw Mr. Gallagher?

A. I got my dinner all right—

Q. Where were you?

A. Outside.

Q. Which side?

A. This is the railroad side, and then the other side I was.

Q. Were you on the side of the platform or on the other side?

A. On the other side, and I see Gallagher. I was standing right by the door of the office.

Q. Here is the office.

A. Here is the office and here is the door, and I was standing on this side; inside, and this is where Gallagher was hitting the Bulgarian.

Q. There is a partition across here?

A. Yes, sir.

Q. You were in this office?

A. In the side door in the office.

160 Q. Make a small cross mark where you were standing. This is the platform here.

A. Yes, sir; where we take checks.

Q. This is the platform between the two cars—now where were you standing?

A. Inside the office door.

Q. Make a mark now, a cross mark—that is the platform?

A. I was standing inside.

Q. You were standing inside the office?

A. Yes, sir; and I saw Gallagher hit him.

Q. Now, there is a partition cutting off the office here?

A. Yes, sir; there is a door right there.

Q. Now, where were you standing?

A. I was standing right there inside this door.

Q. Now, where was it Mr. Gallagher struck this man?

A. Right there, and pushed him on the bed right there.

Q. Were you standing in this door, right in front of this door—right there?

A. That is the door and I was standing inside. The door was closed and I opened the door, and the door was closed—it was a screen door.

Q. What kind of a door was it?

Q. If you stepped inside of the door of the office, did it close behind you?

A. Yes, sir.

Q And you saw the Bulgarian—then here is another door—was this door closed?

A. No, that door was open.

Q. About how wide is that door?

A. It is wider than this.

Q. Can you give me any idea of the width of the door that was not closed?

161 A. The door I was at?

A. [Q.] No, the other door?

A. The other door was not closed at all.

Q. I know that, but how wide was it—show us with your hand—

A. Three or four feet wide, and the door was open.

Q. How wide was it?

A. About that (indicating with his hand).

Q. What was it you heard them say—did you hear Mr. Gallagher say anything?

A. Yes, sir.

Q. What was it?

A. Mr. Gallagher say when he came out, I will fix you for going away.

Q. As he came out?

A. Yes, sir.

Q. Did you hear anything while they were on the inside?

A. I heard how he was hitting the Bulgarian, and he say, me got no money, me got no money; and he says, go and get your dinner, and he says he don't want no dinner.

Q. You don't know whether he wanted dinner or not?

A. I see he didn't go and get it.

Re-Direct Examination.

Q. You say these boys that you knew came down with you disappeared and they went away and left, and you didn't see them brought back? Did you see them back the same day? Did they come back the same day?

A. Yes, sir.

Q. You don't mean you saw anybody bring them back, but they came back again?

A. Yes, sir.

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Thereupon the Government, to maintain the issues in its behalf, called as a witness Dr. CRAIG, who, being duly sworn, testified as follows:

Direct Ekamination.

Q. What is your name?

A. Dr. Craig.

Q. You are a physician?

A. Yes, sir.

Q. Where do you live?

A. Laurel Hill, Florida.

Q. What county?

A. Walton.

Q. Do you know E. E. Reese?

A. Yes, sir.

Q. Do you know Mr. Gallagher?

A. Yes, sir.

Q. Do you recognize the gentleman here?

A. Yes, sir.

Q. Did you see Mr. Gallagher in company with two other gentlemen sometime in the month of July on the public road that leads from Florala to Laurel Hill?

A. Yes, sir.

Q. Who was in company with you at that time?

A. Mr. Reese, E. E. Reese.

Q. Before you saw these three gentlemen, one of whom you recognized as Mr. Gallagher, on the road that day, did you see a stranger or a strange looking man before then?

A. We met a stranger coming down the road.

Q. What would you take him to be—a foreigner?

-163 A. Yes, sir; he was a stranger. I knew he was not of our country.

Q. Have you been able to recognize or identify the same man since then here in Court?

A. I have seen him, but I could not swear to it.

Q. What were the actions of this man when you met him?

A. He turned out from the road before we got up to him; he stepped out as far as from here to that mantle over there, and turned his back upon us.

Q. How far from the road did he turn out?

A. 25 or 30 feet probably.

Q. Were you going in the same direction with this stranger, or meeting him?

A. We met him.

Q. Is your vision defective in any way?

A. I am near sighted.

Q. How long was it before you met or overtook these other parties?

A. Three-quarters of an hour, or may be an hour.

Q. You had gone on this road?

A. We went on up.

Q. In the opposite direction from the man you met—you were going one way—

A. Yes, sir.

Q. You were going to Laurel Hill?

A. Towards Florala.

Q. And in three quarters of an hour you met these parties?

A. Yes, sir.

Q. You were coming back, were you, in the opposite direction?

A. We had turned back towards Laurel Hill.

Q. On the same public road?

A. Yes, sir.

Q. And you met these three parties—did you recognize any of them?

A. I recognized Mr. Gallagher.

164 Q. What was said, if you had any conversation?

A. I spoke to him, called him by name, and asked him what they were doing—who they were after I think were the words I used; and he replied, "this thing"—pointing back to the man in the rear of the buggy, sitting facing away from them.

Q. Did you notice the man on the rear of the buggy?

A. Yes, sir.

Q. What did he appear to be?

A. He was the same man we had met before.

Q. That was all your conversation?

A. That is all.

Q. Do you know where Mrs. Paul lives on that road?

A. Yes, sir.

Q. How far from her house?

A. A few miles, I suppose.

Q. Now, this public road where you met these parties, do you know what county and State that is in?

A. Walton County, Florida.

Q. And this road you were traveling ran from Florala to Laurel Hill?

A. Yes, sir.

Q. Do you know where Lockhart is?

A. Yes, sir.

Q. This same road led in the direction of Lockhart?

A. Yes, sir; it goes to Florala, and then it branches off a little this side. I have never been to Lockhart in a buggy, but on the train.

Q. Now, it is near Mrs. Paul's that you met these parties?

A. Yes, sir.

Q. Did you see anything besides the horse and buggy at the time?

A. There were two dogs running with the buggy.

Q. Will you describe the kind of dogs or how they looked? You are acquainted with the different
165 breeds of dogs?

A. They were hounds—regular black and tan hounds.

Q. Was there any dog in the buggy?

A. I didn't see any dog in the buggy.

Q. Would you be able to recognize any of these, the other parties, if you could see them, or didn't you pay sufficient attention to them?

A. I didn't notice who they were at the time.

Q. Have you had any conversation or met Mr. Gallagher since that time at Laurel Hill?

A. Yes, I met him there a few days afterwards.

Q. What conversation had you with Gallagher in reference to this incident, if any?

Defendants' counsel did then and there object to the said question on the ground that no conspiracy has been established, and the declaration of one of the alleged conspirators cannot be heard, or bind the others, except when the conspiracy has been established.

But the Judge did then and there overrule the said objection, to which ruling of the Court the defendants did then and there except.

Q. What conversation now was it that you had with Gallagher in reference to the incident you have just described?

A. I walked up to his buggy and spoke to him and told him that I understand the old man over there was a little bit excited about the incident, said to have taken steps.

Q. What old man?

A. Mr. Paul. I heard he was mad, and I thought I would tell him about it. He had better look out, the old man was talking about making some trouble.

Q. What did Gallagher say?

166 A. He didn't say anything; he smiled and changed the subject, and went on talking. I told him to come to my office I wanted to see him as he came back, but when he came back I was not in my office, and I do not know whether he stopped or not.

Q. There was no denial by him of the occurrence about which Mr. Paul was mad, and which you related to him?

A. No, that was all I said.

Thereupon the Government called as a witness one E. E. REESE, who having been duly sworn, testified as follows:

Direct Examination.

Q. Where do you live?
A. Pensacola.
Q. Were you in the vicinity of Laurel Hill some time in July of this year?
A. Yes, sir.
Q. Do you remember the date?
A. The 19th.
Q. Of July?
A. Yes, sir.
Q. Did you have occasion to travel the public road from Florala to Laurel Hill that day?
A. Yes, sir.
Q. With whom?
A. Dr. Craig.
167 Q. Did you meet a stranger, a foreign looking man on that trip?
A. Yes, sir.
Q. About where?
A. Between Bay Creek and Horse Head Creek, about a mile or a mile and a quarter from Laurel Hill?
Q. Was it near any residence or place that you knew?
A. It was near a little—one or two houses occupied there by people named Paul.
Q. How far from that house did you meet the stranger?
A. About a quarter of a mile.
Q. What were the peculiar actions of the man, if any, when you met him?
A. When we first saw him he looked as if he was hunting for something on the side of the road, and started to go out in the woods, and turned around again, and looked at us, and came back in the road and continued on.
Q. Can you recall how he was dressed—what kind of a hat he had on?
A. He had a soft hat, I think.
Q. Did you see the man any more,
A. I saw him afterwards sitting in the back of a buggy going in the opposite direction.
Q. Do you know any of the gentlemen, or are you able to recognize any of them again if you were to see them?
A. I see one of them.

Q. Who is he?

A. Mr. Gallagher.

Q. There were two other gentlemen in the buggy with him when you met him?

A. Yes, sir.

168 Q. Did you see some strange man that you had never seen before in the buggy?

A. I saw him in the court room.

Q. Did you see him with these three parties?

A. He was sitting in the back part of the buggy.

Q. Was there any conversation in your presence between Dr. Craig and any member of that party?

A. Yes, sir.

Q. What was it?

A. Dr. Craig asked Mr. Gallagher—he says, Hello, Gallagher, what are you doing down here? Mr. Gallagher replied, we are after this thing and pointed to the back of the buggy with his thumb.

Q. And the man in the back of the buggy was the same man you had previously seen on the side of the road?

A. Yes, sir.

Q. How long a time had elapsed from the time you saw this?

A. I should say about half an hour.

Q. Are you very familiar with the location, with the county lines and the State lines?

A. Yes, sir.

Q. Do you know of your own knowledge about what location it is as to township, range and section?

A. It was in section three, township 5, range 22 west, Walton County, Florida.

Q. Did you see anybody at this house as you passed, or were you stopped by anybody as you passed?

Q. [A.] We were stopped by a boy as we came back.

Q. Did you see that man?

(Trulich Mihaly was here brought into court for identication by the witness.)

A. That is the man we met.

169 Q. Before you met these parties with the man in the buggy?

A. Yes, sir.

A. And he was the man in the back of the buggy?

A. Yes, sir.

Q. How were these men traveling that morning; did they have anything with them? That is, Gallagher and the other gentleman?

A. We met in front of the buggy three dogs.

A. [Q.]What kind of dogs?

A. I asked Dr. Craig if they were not man trailing hounds, I thought they were. It looked to me like it.

Q. Did you hear the dogs this morning before you met these parties?

A. No, sir.

Cross Examination.

Q. Which way were you going when you first saw this man?

A. In the direction of Florala.

Q. And he was coming away from Florala?

A. Yes, sir; towards Laurel Hill.

Q. What was his conduct when you first noticed him?

A. Why, he was walking towards Laurel Hill and looked as though he was either looking for something on the road or was trying to avoid us; I could not tell which.

Q. What acts did he do?

A. He looked up and saw us, and started off towards the lefthand side of the road, and he took a few steps and looked again and came back into the road.

Q. Did he speak to you?

A. No, sir.

Q. Did you notice him, if you passed him—was his conduct sufficient to lead you to notice him after you passed him?

A. No; we went on. I did not turn around to look at him.

170 Q. I believe you say you saw some dogs?

A. Yes, sir.

Q. Where were the dogs?

A. They were about 50 or 75 yards ahead of the buggy.

Q. Did you see these men in the buggy before they came up with this stranger?

A. I did not.

Q. Only after they came up with him?

A. Yes, sir.

Re-Direct Examination.

Q. Did the man have anything in his hands at the time you met him—the stranger?

A. I do not think he did—I dd not remember seeing anything.

Thereupon the Government called as a witness one MRS. PAUL, who having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?
A. Mrs. Paul.
Q. Where do you live, Mrs. Paul?
A. I live near Laurel Hill.
Q. On the public road?
A. Yes, sir.
Q. Do you know what that road is called?
A. Laurel Hill and Florala road.
171 Q. Did you live there last July?
A. Yes, sir.

Q. Do you remember three gentlemen in a buggy coming up to your house and overtaking a strange looking man, a foreigner?

A. Yes, sir.

Q. Do you remember what day of the month that was—what time?

A. The 19th or the 20th.

Q. Of July?

A. I think that was the time.

Q. Do you remember the day of the week?

A. Thursday, I think.

Q. Now, Mrs. Paul, just state to the Court and jury what you saw with your own eyes of this occurrence?

A. I saw a man pass going towards Laurel Hill, and then just as he got past us there, I could not see him, I heard an awful noise, and I raised up out of my chair and looked, and they was advancing, the man was ahead of the horse, and they come on then where I could see good; one went off with the buggy on one side, throwing his hand right at him that way.

Q. Did he have anything in his hand?

A. Yes, sir; it looked like a pistol. Just throwing his hand, and the man kept advancing until he turned off of the road and came nearer to me, and kept coming on around the fence, and the other one went off on the other side, and taken the whip off of the front of the buggy.

Q. What was done with the whip?

A. When he overtaken him he went to whipping him.

Q. Now, was the man—the strange looking man; was he walking backwards? You say advancing, who was it advancing?

A. The man that was passing my house going to Laurel Hill, coming from towards Florala.

172 Q. The strange looking man—was he advancing backwards?

A. Yes, sir; in front of the horse.

Q. Walking backwards?

A. Yes, sir.

Q. And the other two men were getting out of the buggy?

A. Yes, sir.

Q. One had a gun and the other had a whip?

A. Yes, sir.

Q. What kind of a whip?

A. He taken it off of the front of the buggy.

Q. Did you say it made an awful noise?

A. Yes, sir.

Q. What kind of a noise?

A. They was using rough language.

Q. Profane language?

A. Yes, sir.

Q. Do you remember any of the words that were used? Did you pay any attention to the words?

A. Not much; I was frightened.

Q. Did you see the man strike the man that was advancing backwards?

A. Yes, sir; I saw him strike him, with a whip.

Q. One or more times?

A. Yes, sir.

Q. Several licks?

A. It looked to me so.

Q. What was the man walking backwards doing?

A. Throwing up his hands like he was begging; I could not understand him.

Q. Did you see the whole scene?

A. No, sir; I didn't look at it all.

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Defendants' counsel did then and there move to strike out the statement that he had the appearance of begging, which motion was thereupon granted by the Court.

Q. The man was making a noise, was he not?

A. Yes, sir.

Q. Did you see the whole of that scene?

A. No, sir.

Q. Why?

A. I turned away—I did not look.

Q. You could not look at it?

A. No, sir.

Q. What became of the men—did you see them any more?

A. When they quit whipping him, one man turned and went back to the buggy, and the other one went on a little ways; I noticed him, and then I turned and noticed the man sitting on the buggy, and asked him what was the trouble.

Q. And what was his reply?

A. He said this man had stolen some clothes, was the best I understood him.

Q. The man had stolen some clothes? That was the man who did not get out of the buggy at all?

A. Yes, sir.

Q. Did they put the man in the buggy?

A. I could not tell you.

Q. They had not reached the buggy when you quit looking?

A. No, sir.

Q. How far was that from your gate?

A. About thirty-five yards.

Q. Do you know Mrs. Gibson?

A. Yes, sir.

Q. Where did she live at that time?

174 A. Just across the road—right in front of me.

A. You say you saw them go back towards the buggy?

A. Yes, sir; one man went back towards the buggy from where they done the whipping.

Q. Did not one of the two men who did the whipping, or held the gun, have hold of this man?

A. No, sir; I do not think he had hold of him.

Q. Was he riding with that stranger?

A. The stranger was walking in front of the man that had the gun the last time I noticed them.

Q. These men were all strangers to you?

A. Yes, sir.

Q. When you say strangers you have reference to the man being whipped?

A. All of them.

Q. All of them were strangers?

A. Yes, sir.

Q. You say you had some conversation with one of these men?

A. Yes, sir; I asked him what was the trouble about.

Q. And he stated that this man who was being whipped had stolen some clothes?

A. Yes, sir.

Q. Did he make any further statement to you?

A. No, sir.

Q. Did he state what he was going to do with him?

A. No, sir.

Q. Just as a matter of trying to refresh your memory, do you remember his saying to you that he had stolen some things, and he was going to turn him over to an officer or something of that kind?

A. No, sir.

Q. And didn't you say that was the right thing to do with him?

175 A. No, sir.

Re-Direct Examination.

Q. You didn't have any other conversation with this man?

A. No, sir; not a word.

Q. Were you excited at the time?

A. A little, but I remember very well.

Q. Was anything with this man that you noticed about the buggy?

A. Yes, sir; I saw what looked like a couple of dogs running around back of the buggy when I was talking to the man.

Re-Cross Examination.

Q. Do you think you would recognize that stranger if you saw him?

A. No, sir.

Q. You have not seen him since you have been here, have you?

A. I may have, but I do not know him.

Thereupon the Government called as a witness one TRU-

LICH MIHALY, who having been duly sworn, through the interpreter, testified as follows:

Direct Examination.

Louis Friedman, interpreter.

Q. What is your name, nationality and religion?
A. Trulich Mihaly. He is a Greek Catholic.
Q. What is his nationality?
A. Hungarian.
176 Q. Ask him where his home is? Where he considers his home?
A. New York.
Q. Ask him when he left New York, if he remembers last?
A. He left New York July 14th, on Saturday.

Counsel for defendants suggested that the question should be propounded directly to the witness, and that the interpreter should simply act as a machine.

Q. Where were you going?
A. They boarded a ship in New York and they went to Savannah.
Q. Did you engage to work for the Jackson Lumber Company at Lockhart, Alabama?
A. Yes, sir; he says he didn't know the name then, but they told him they would take him to Lockhart to work in a saw mill.

Counsel for defendants suggested to the interpreter to give the direct answer instead of indirect, so that they would have it exactly.

Q. Where did you engage in New York to work for the Jackson Lumber Company?
A. In an office of Mr. Miller's.
Q. Do you know Newlander?
A. Yes; he was there in the office.
Q. Point him out if you see him now?
A. That is the man.

Counsel for Government:
Stand up; don't try to hide yourself.

Counsel for defendants object to the manner used by Government's counsel to the defendant.

Government's Counsel,
We think it was deserved.

The Court:
If counsel object to any party being identified and wants a more specific description, they have the right to
177 have two or three parties stand up at one time.

Counsel for Defendants:
The thing I was objecting to was the manner in which there was a severe attack personally, and the Court knows that these things are usually kept out.

The Court:
I have long since learned that I could not control attorneys' manners within certain limits. There is many a look of the eye and a curl of the lip, and a tone of the voice that may mean a great deal on either side, but I cannot reach it. The only thing I can do is to keep counsel from commenting upon the Court—I stop that.

Counsel for Defendants:
It is in the language that I am dealing with—he says, stand up, do not try to hide yourself.

The Court:
I did not see what he was doing that might or might not be pertinent. I saw a condition yesterday when that remark would have been very applicable; one of the defendants was doing just that thing when he was called for. I won't say which one it was, but I noticed it, particularly, but I didn't notice it at this time, and therefore do not know whether it was applicable or not.

Counsel for defendants did then and there note an exception to the remark of the Court that the defendant undertook to hide himself.

The Court:
The Court repeats that on yesterday, when one of the defendants was called for, in the judgment of the Court he tried to hide behind another defendant, with his head way down,

and the witness was looking for him, and the Court was looking straight at him and saw it; and said remark would have then been proper. I do not know what happened now. Proceed.

Q. Was Newlander present at the office when you signed?
A. Yes, sir.
Q. Did he see Newlander any time after that?
178 A. He seen him, he took him out to a boat where he turned him over to the boat, and then he left them there.
Q. When did you arrive at Lockhart, Alabama, if you know?
A. The 18th of July.
Q. Where did you go to work?
A. He has not worked at all; he has asked them to give him work in the saw mill, and they took him out in the woods, and then commenced going back to Lockhart.
Q. Did you pay any transportation—did you pay your own fare from New York to Lockhart?
A. He has not, but they told him in the office that they would pay.
Q. Was Newlander present when he was in the office when he was told this?
A. Yes, sir.
Q. Who paid your fare, or how was your transportation to be paid from New York to Lockhart?
A. He don't know; he has not seen when the tickets was bought, but the company no doubt, he says, paid for it.
Q. Was anything said in the office of Miller & Frank about the transportation at the time you engaged to work?

But the defendants' counsel did then and there object to the said question because it is irrelevant and immaterial, and not in any way connected with these defendants, as to what was said in the office of Miller & Frank, neither of these defendants being present; and also upon the ground that it is not the best testimony; and that no predicate has been laid.

But the Court did then and there overrule said objection, to which ruling of the Court the defendants did then and there except.

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Thereupon the witness answered:

A. He answered the last question; he answered that Mr.

Miller and Mr. Newlander told him in the office that three dollars would be deducted every month from his salary, and if he stays there six months, why the eighteen dollars would be refunded to him.

Q. It was eighteen dollars, then?

A. Yes, sir.

Q. When did you arrive at Lockhart? Which camp did you go to work at, or which camp did they place you in?

A. He came there to the saw mill, and they took him in the woods.

Q. Where was he to work according to his contract with Newlander?

A. Saw mill.

Q. How long did you stay or work at this camp where you were placed?

A. At the beginning he did not work at all—he left.

Q. Did you leave the lumber camp or the turpentine camp?

A. He left from the place where they were getting timber.

Q. What did you leave for?

A. He left because he was to work in a saw mill.

Q. Where did you leave to go?

A. He started to go back to the saw mill, as Mr. Sandor—he knew Mr. Sandor was there, and thought he was the only one he could talk to, and he wanted to lodge his complaint of the camp work in the saw mill, according to his understanding.

Q. Ask him if he reached Lockhart—if not, why, and where did he go to?

A. No, he did not; he got lost, and he commenced going in the woods right along—he did not go to Lockhart.

Q. Did you meet on the road the day you were trying to reach Lockhart two gentlemen in a buggy?

A. Yes, sir; he does—it was not very far from the farm where he met them.

180 Q. Ask him what he did when he saw these men in the buggy in the road?

A. He stepped out a little from the road—stepped aside.

Q. Where did you go after you passed these men in the road?

A. He went, he says—he got on a farm—near a farm—and that is where he met Mr. Gallagher and Dr. Grace, and Mr. Sandor.

Q. What did they do or say to you when they met you?

A. He says when he seen them he wanted to go and tell them good morning, and bid them the time of day, and they commenced whipping him with a whip over his head, and Dr. Grace jumped out of the buggy, and took hold of his arm.

Q. Who whipped you?

A. Mr. Gallagher.

Q. Who held you?

A. Dr. Grace. In the other hand he had a revolver.

Q. Do you know Dr. Grace?

A. Yes, I know him; there he sits over there.

Q. The man next to Newlander?

A. Yes, sir.

Q. What sort of a whipping did you get there—how many licks?

A. He don't know exactly how many times they hit him, but he got a good beating.

Q. What did they whip you with?

A. With a whip.

Q. What kind of a whip?

A. Buggy whip—the one they drove the horse with.

Q. Did he see the gun or pistol?

A. He says he was going back when he seen two men coming in the direction towards him. They have shown him a big revolver, as indicated by the motion of his hands, and they have told him that he shan't try to move; if he does they will shoot him.

Q. Do you know Sandor?

181 A. Yes, sir; there he sits over there.

Q. What did they do with you now, after the whipping was given you?

A. Say they took him in the buggy and commenced going back towards Lockhart, and Sandor told him if he had not been there, these two other people would have killed him—shot him, rather.

Q. How far did you go from where you were whipped before you got in the buggy?

A. Don't know exactly the distance as he was scared, but went a distance; was walking a distance before they took him in the buggy.

Q. Before or behind the buggy, did he walk?

A. Opposite the horse head he was going.

Q. Who walked with you ahead of the buggy?

A. Dr. Grace took hold of his arm, as he showed; he had a revolver so he should not run away.

Q. How were you dressed that day?

A. He had on the same coat but the pants he left at home; that is all he had—that coat, and pants to the coat.

Q. Did you have anything in your hands when you met the first gentlemen you met that morning?

A. No, sir; I did not have anything.

Q. Did you have anything with you when you met Gallagher, Grace and Sandor in your hand?

A. No, sir; I did not.

Q. Did they accuse you of stealing when they met you on the road at the time they whipped you?

A. No; he says, did not say anything; says they told him because he left without paying what he owed to the company—his ticket.

Q. Where did you first go to, in a town or village, after they whipped you?

A. They went to a little village; he don't know the name of the village.

182 Q. Did the man in the buggy stop in the village?

A. Stopped there before a saloon.

Q. What was done there; what did the three do or the two do?

Explanation by Interpreter:

(I must explain to you, you gentlemen, that a saloon in our language is as well as a restaurant as a saloon where you sell liquor. In our part of the world all restaurants has a saloon connected with the restaurant secondary; they call it a saloon; all restaurants in our country have got saloons, so it might be a saloon or it might be a restaurant.)

A. Stopped before a saloon and two of them went in a saloon and come out and lit their cigars and the third one went in there and when he come out and lit his cigar they got on the buggy and went to Lockhart.

Q. Did they have any dogs along?

A. Yes, sir; had three dogs.

Q. Now, where did you go to after you left this village to the next place?

A. Went to Lockhart.

Q. What did you see or did you want to see at Lockhart?

A. Says, as they arrived in Lokhart they stayed there a little while, and Dr. Grace come to the buggy—a good many other Hungarians was around there—Mr. Sandor was there—and he told him he would not work in the woods as he agreed to work in a saw mill, so Dr. Grace took hold of him, as he took hold of his coat and pushed him into the buggy, and Mr. Gallagher give him a couple of licks with the whip, and commenced going out into the woods.

Q. Where did you go?

A. Took him to the woods.

Q. What did Dr. Grace or Mr. Gallagher say when he protested?

A. Says Mr. Sandor told him he got to go to work in the
woods; there is no place for him—cannot give him
183 any work anywhere in the saw mill—got to go to
work in the woods.

Q. What was said by Grace or Gallagher when they gave him the two licks? What did they give him two licks for?

A. The reason they whipped him was because he told them he did not want to go to the woods; he wants to remain at Lockhart to work in the saw mill or send him back to New York.

Q. Where did he go then? What kind of work did he go at?

A. He was working on the railroad; they give him railroad work the next day.

Q. When you left the camp the first time to go to Lockhart? Did you have any clothes—first, I will ask you did you have any baggage, luggage or clothes at the turpentine camps that you brought with you from New York?

A. He had clothes when he left New York, and they was left in Lockhart.

Q. Did you have any clothes with you the morning or the evening that you met these men, Grace, Gallagher and Sandor?

A. He had nothing but what he had on; that is all he had.

Q. When did you get back to Lockhart—what time of day did you get back with Grace, Gallagher and Sandor?

A. About half past six they arrived at Lockhart.

Q. Were you then accused or told by any of these men, Grace, Gallagher or Sandor, that you had stolen anything?

A. They had not said anything to him.

Q. How long did you stay or remain at the camp after this?

A. Eight days.

Q. Where did you go when you left Lockhart the last time?

A. Left there on Sunday and come to Pensacola to court;

Mr. Newlander and a Mr. Porter and Mr. Gallagher was with him.

Q. Who did you come down with in the car? Who brought you down to Pensacola?

184 A. Mr. Newlander was with him.

Q. What did you come to Pensacola for?

A. He didn't know anything about it; they never told him where he was coming; just told him he was coming to Pensacola to court.

Q. Were you brought here to the Court then, and did you testify?

A. He says the second day he came up here to the Court, yes, sir; with Mr. Newlander.

Q. Ask him what Mr. Newlander said to him about going back to New York, and what he would be paid to go back to New York, if anything?

Counsel for defendants did then and there object to the said question as leading.

Q. Did you have any conversation with Mr. Newlander on your way down here to Pensacola about going back to New York, and if you would go, what would you get, if anything?

Counsel for defendants did then and there object to the question upon the ground that it is leading, and upon the further ground that the declaration and acts of one of the alleged co-conspirators was not binding upon the others until a prima facie case has been made out, and no prima facie case has been established; and as to all of the defendants, except Newlander, they object to the same on that ground.

But the Court did then and there overrule the said objection, to which ruling of the Court defendants did then and there except.

And the witness answered:

A. He says Newlander told him they should run away to New York, and he would not do it; he says he wants to work out all he owes to the company.

Q. Why did Mr. Newlander want him to go to New York?

A. He says Mr. Newlander told him they might get into trouble here and it would be better if they would go back to New York.

185 Q. When you went back from Lockhart to the camps to work, were you satisfied there then?

A. Yes, sir; he was satisfied because he couldn't go no wheres; he say he didn't have no money, and he was afraid to leave. He says they can do there with a man anything they want to do, and nobody would see it but one God.

The following questions were propounded to the interpreter by defendants' counsel.

Q. You are a Jew?

A. Yes, sir.

Q. You are not a Christian?

A. No, sir; I am not; I am a Jew.

Q. The reason I asked you that the Jewish faith has—they have an oath, have they not, which is administered?

A. Yes, sir.

Q. Now, that oath is more binding upon the conscience of a Jew than the one ordinarily administered?

A. No, sir; it is the same; there is a difference in Jews; there is the reform Jew and the orthodox Jew. The reform Jew takes the same oath as the Christian does; the orthodox Jew, while he treats an oath binding, at the same time the genuine orthodox Jew he takes a solemn obligation upon him, has to be taken with the Bible, with the scroll in his hands, the five Books of Moses, but that thing is being done away with. There is really no difference if the Bible is written on a table or is printed on paper. We are trying to overcome these things; we are trying to enlighten them to get like the rest of the civilized nations.

Q. This oath is just as binding?

A. Just as binding on us as it would be on you or any one else; after all it is more a principle and more a character than anything else.

186 Cross Examination of Trulich Mihaly.

Q. What day of the month was it that you arrived at the log camps of the Jackson Lumber Company?

A. The 18th day of July when we arrived at Lockhart.

Q. About what time of day or night?

A. We arrived about between three and four o'clock in the afternoon at Lockhart.

Q. Where did you stay that night?

A. They took him out afterwards to the camp, and he slept in one of the cars—sleeping cars out there.

Q. Did you sleep with anybody or was anybody sleeping in the car besides you?

A. He says every berth had room for two, and there was several people sleeping in there.

Q. Did you know any of them?

A. Only one man who came along with him—he knew that man; and that man was his partner and slept with him.

Q. What was that man's name?

A. John Kolichaney.

Q. What time the next day did you leave the camp?

A. He don't know for sure, as he had no watch with him, but he thinks it was about eight or half past eight in the morning.

Q. Did you have any conversation with anybody at the camps while you were there?

A. He says that he did talk to one man who he knew—got acquainted with; and he asked him to give him three cents to buy some tobacco with, which the man gave him, the three cents, and he went in the store there and bought this tobacco, and was starting out going to the saw mill.

Q. Who was that man?

A. He don't know his name at all. They come together on the ship.

187 Q. Was it Benderstock?

A. He don't know—never heard his name.

A. These are the only two present you had any conversation with, your partner and this man you got the money from to get the tobacco with?

A. Yes, sir—some women talked to him. These are the only two men he was talking to.

Q. Are those the only two men that you know at that camp?

A. Yes, sir.

Q. Now, when you left the camp, did you travel the road, or did you go through the woods?

A. He traveled in the woods.

Q. Was there a road leading from the camp back to Lockhart, do you know?

A. He says he went there to the camp—he got there by rail, and he don't know if there was any direct road going by—says he just went through the woods.

Q. You were exercising your judgment as to the direction in which you would find Lockhart, were you?

A. He didn't know exactly the direction Lockhart was in; he was going any way.

Q. Were you going in the direction that you thought Lockhart was?

A. Yes, sir; he was going—he thought Lockhart was in that direction and he was following that direction.

Q. And that is where you were trying to go?

A. Yes, sir.

Q. Did you reach Lockhart at all that day?

A. No, sir.

Q. Did you have any conversation after you left the camp with anybody until these men overtook you?

A. Didn't meet anybody except the two men, and he has not had any conversation with any one at all.

188 Q. Then how do you know that it was Mr. Gallagher that overtook you?

A. He didn't know the names then at the time, but he knew him. He didn't know the names.

Q. Where had you seen him before?

A. They was coming from Savannah; they stopped at Lockhart and Mr. Gallagher met them there; he seen him there.

Q. How long did you see Mr. Gallagher there as you went on out?

A. He says he has seen him while they was dividing the men to the different works, and he seen Mr. Gallagher the next time also in the camp where he was.

Q. What time of day did you see him in the camp? Where were you on the following day?

A. He says he seen Mr. Gallagher before 6 after 6, as the men went out to work, and he even told Mr. Gallagher that he is not going to work in woods, that his agreement was to work in the mill, and to either give him work in the mill or send him back to New York. And Mr. Gallagher says he is strong enough to work in the woods and to go to work in the woods.

Q. Who interpreted that conversation for you?

A. There is a Slav come there who came with me; he says he could talk a little English, and he was the one who interpreted from Mr. Gallagher to him, and from him to Mr. Gallagher; he speaks the Slav language as well as the Hungarian language.

Q. How many languages do you speak?

A. He understands the Hungarian language. And there is a little ——, it is a language spoken in the eastern part of Europe. It is a language that is not used much; it resembles more the Russian language than anything else.

189 Q. What is the name of that Slav?

A. He didn't know his name at the time, and he don't know his name yet. He has seen him, he was talking to him out there a good deal, but has seen him in the court, but has never spoken to him here.

Q. He is here at this time?

A. He has seen him. He was here last week, he says, but at present he does not know whether he is here or not.

Q. Well, you did have some conversation with some one else besides these two men that you named?

A. He did not.

Q. You had a conversation with Mr. Gallagher there and the interpreter, didn't you?

Q. He says those are the same two, the Slav and that other fellow.

Q. Now, when did you first see Dr. Grace?

A. He seen him as he got off the ship at Savannah.

Q. Did he get on the same train with you from Savannah to Lockhart?

A. Yes, sir.

Q. Where did you see Mr. Sandor?

A. Just before arriving at Lockhart Mr. Sandor got on the train, and he asked them how many Hungarians there is in the bunch.

Q. Did you understand when he asked that question; did you understand it and understand what he said?

A. He have hear him, but don't know exactly what was said. He has forgotten.

Q. Did you understand what was said?

A. Yes, sir; he understood.

Q. Was Mr. Sandor speaking in your language at that time?

A. Yes, sir.

190 Q. Did he have any conversation with you beside this remark you speak of?

A. He heard what he say talking to the men. He was sitting down on the bench, and just simply heard the talk; nothing in particular was said. He took the address and name of each man, Mr. Sandor did, and asked them what religion they belonged to and so on.

Q. On board the train?

A. He asked them on the train what religion they had; did they have any profesions, if any, and what country they are, Hungarians, Slavs, Poles, Russians, and so on.

Q. Whom did you speak to, confer with, at Lockhart when you got there, about your employment?

A. He heard Mr. Sandor speak the Hungarian language, and he thought he would talk to him.

Q. From whom did you hear that? Who told you that?

A. He says he don't know to begin with, but he says as Mr. Sandor got on the train and commenced to talk Hungarian he knew he got some one to talk Hungarian to.

Q. Did you know where Mr. Sandow stayed?

A. No.

Q. What reason had you to suppose that you would find him at Lockhart?

A. He says as they were sending him out in the woods, he saw Mr. Sandor remained in Lockhart and he took it for granted that he stays in Lockhart.

Q. You say that you were whipped; how many licks were you struck when you were first whipped?

A. He don't know.

Q. Did you testify before the United States Court Commissioner in respect to this same matter some time during the middle part of last August?

191 A. Yes, sir.

Q. Did you testify at that time that you were struck several licks on that particular occasion?

A. Yes, sir; he did.

Q. Did you testify that you were only given two licks with the whip?

A. He says he testified that at Lockhart at the mill, as he called it, they only give him two licks with the whip, but in the woods they gave him several, he don't know how many.

Q. Did you not testify before the Court Commissioner, testify to any licks that were struck other than those two licks?

A. He says he testified that they whipped him both times; in Lockhart and on the road.

Q. You, in seeking Lockhart, were not endeavoring to make your escape but seeking work in the mill instead of in the log camp?

A. Yes, sir; that is the case. He didn't try to run away, but was trying to go back to Lockhart to lodge his claim about the work.

Q. Then you were willing to go back to work out what you owed them?

A. His intentions were to go back to Lockhart to work down what he owes to the company; after that to write a letter to New York to his brother to send him money to go back to New York; and then in New York his intentions were to institue suit against the company.

Q. Then did you have any objection to going back with these men to work out that indebtedness?

A. He says there was no question about wanting to go back; they didn't ask him anything about it; but just as soon as they seen him Dr. Grace took hold of his arm and Mr. Gallagher whipped him.

Q. How long did you stay in this camp after you went back?

A. About eight days.

92 Q. Did you stay there because you were afraid to leave?

A. He says he stayed there because he didn't have any money to go away, and he was afraid to leave.

Q. Were you not asked this question at the examination about the first of August when you were testifying with reference to this same matter as follows: "Did you stay there because you were afraid to leave; did you have free agency, or were you compelled to stay?" Ans. His reply was: "That he wanted [to] work out what he owed to the company, and then write back to New York for some money to go back to New York." That is what his reply was. Ask him this: Did you not, in answer to that question, say: "No, I stayed there not because I was afraid to leave, but simply stayed there because I have not money to go away; I made up my mind to work up what was coming to the company and then leave?"

A. He says he repeats the same thing now; he has always said that he stayed there because he was afraid to leave; that is one reason; the second reason he wanted to work out what he owes to the company, and then he wanted to write home a letter to his kin folks in New York, and to go back to New York, and then sue the company in New York.

Q. Say to him this—that is not the question. Did you testify in the language there stated at that time?

A. He claims that he answered that he was afriad to leave, and wanted to work out besides, he wanted to work out what he owes, and he was afraid to say anything in the woods out there. He would not say anything.

Q. Ask him this question: say to him to answer yes or no; ask him to tell whether or not he testified to that state of facts, and to answer yes or no.

A. He says his answer was he was afraid to leave.

Q. Read the question and answer to him and tell him to answer you yes or no, whether he made that statement or not? 193

A. He says he told them the reason he didn't go away because he was afraid to leave.

Q. You had no trouble in making him understand anything else, Mr. Friedman?

A. None at all.

Q. He has been able to understand everything?

A. Yes, sir.

Q. Did you at any time during the course of that examination say that you were not afraid to go back?

A. Cannot understand it, he answers. He says he was afraid and they took hold of him and they took him back, and that is all I can get out of him.

Q. Did you testify before a body of men up here just before this term of the court began known as the grand jury?

A. Yes, sir; he remembers.

Q. Did you testify to these general facts that you have stated here?

A. Yes, sir.

Q. Did you state to these gentlmen here what your name was at that time?

A. Yes, sir.

Q. You say you told Mr. Newlander that you did not want to go to New York with him because he wanted to go back and work out what he owed the company?

A. He had, he said, when he was coming on the train he wanted to work for the company until he worked out all he owes and then leave.

Q. Then you were not afraid to go back and work for the company?

A. He says he was in the company's hands and could not say anything.

Q. Were you in the company's hands at the time you were down here with Mr. Newlander?

A. He says he was always with the company, and could not take a step unless they watched him until he was turned over to the Court here. 194

Q. When was it that you had this conversation with Mr. Newlander, before or after you were turned over to the Court here?

A. Before.

Q. Well, if you were in the hands of the company, why did you not accept Mr. Newlander's offer to return to New York?

A. He says he was afraid; he already got a whipping; they caught him once and he was afraid to run away again.

Q. Did anybody look after you besides Mr. Newlander?

A. At the time of this conversation there was nobody but him and Mr. Newlander.

Q. Then you could have left without the company interfering with you, could you not?

A. He says he told him he did not want to run away; he wanted to work out his fare.

Q. Was that statement to him true or false?

A. He says he would not run away, that he could, but he was in their hands, and could not run away.

Q. As a matter of fact, were you not trying to run away the first day after you got there?

A. Yes, sir, he says he wished to go away somewhere else because he did not want to work in the woods; he takes the statement back; he says at the beginning, he says, that he didn't have the least idea of running away, but after they was taking him back and he saw the work they tried to work his blood out of him with a great big hammer on a railroad, and he says then he would have run away if he could, but he was afraid to run.

Q. Then you were not trying to run away the first morning that you left there?

A. No, he did not that day, did not want to run away.

195 Q. Now, when you met these defendants in the buggy before these defendants took you in charge, and before they came up with you, did you not quit the road upon seeing those two men in the buggy?

A. He says that he left the road because the road was muddy; it was raining that day, and he thought he would walk in the woods.

Q. Are you sure that where you met these two men in the buggy it was not on the top of a hill?

A. Yes, sir; there was a little elevation.

Q. Was there mud on that elevation?

A. He says it was on the flat part of the road there was some timber there; it was raining and the water did not run off. Had not run down yet and there was several little roads in the woods, and he taken to one of these roads.

Q. How far did you go out of the road to avoid the water?

A. He don't know for sure.

Q. How many villages did you visit on your return to Lockhart, before you reached Lockhart?

A. He says he was excited and scared, and don't remember how many villages they reached.

Q. Did you pass through as many as two?

A. He don't remember. He remembers that they stopped at a little place, and from there they went to Lockhart, but he don't remember for sure that they passed any other.

Q. How far is that little place from Lockhart?

A. He says he was in the buggy and don't know for sure how far.

Q. About how far? Estimate it.

A. He is not sure, don't know exactly how far.

Q. Was it a half mile?

A. He don't know; says he was in a wagon he calls it; he was scared and don't know how far it was.

Q. This contract in which it was stipulated that you should work in the mill instead of the log camp—what kind of a contract was that—a written one or a verbal one?

196 A. It was on paper; he says it was on paper, but he didn't understand anything on it; but they told him verbally that he goes to a saw mill.

Q. Who told you that?

A. He says Mr. Miller in New York and Mr. Newlander.

Q. Was not that paper written in a language that you can read?

A. No; he says it was written in the English language.

Q. Was there no other language in it than English?

A. He says the written part of it was all in English, but the printed part, he says there might have been some of the words in some other language.

Q. What did you do with that contract?

A. He says at the time they brought him down here they did not tell him they were not going to take him back, and he left his clothes there and also left his contract. Everything left there.

Q. Does that look like the contract you had? (Handing paper to witness.)

A. He says this contract resembles the contract he got, but this here was written in English; this part here was written in pencil, was written in English.

Q. Were these statements made to you before or after you were furnished with a written contract; I mean the statement of Mr. Newlander that he had work in the mill?

A. He says they told him before they gave him the contract, they told him he was going to work in a saw mill, and also after they gave him the contract they told him he was to work in a saw mill.

197 Q. You knew that day when you first saw Sandor, I mean the day when they first overtook you, July 19th, you knew at that time that Sandor could speak the language that you could understand?

A. He says yes.

Q. Did you have any conversation with him at that time, or ask him what they were going to do with you or anything of the kind?

A. He says he did have a conversation with Mr. Sandor after he got the licking; he says that they took him out to work getting logs, and Mr. Sandor cursed him out and told him he got nothing but trouble with him.

Q. Immediately after they first took you into custody, did you have any conversation wtih him?

A. He says they didn't have much converiation, he just simply asked him for a match; didn't have any conversation much with him at all.

Q. Why did you not ask him what they were treating you like that for?

A. He didn't ask him.

Q. Why not?

A. He says they was awful mad, and he was afraid to talk to them at all.

Q. Mr. Sandor hadn't molested you at all, had he—had not offered any violence towards you?

A. He says that all three of them was there and none of them was talking to him, and he was not talking to them.

Q. After they returned you to the log camp on the 19th of July, did you make your escape again?

A. No, sir.

Q. Did you attempt to escape?

A. He did not attempt, nor did he want to run away, because he was afraid.

Q. Do you know whether that was in the log camp or about the logging camp or the turpentine camp?

198 A. He says he was working where they was cutting timber away out on the railroad.

By the Interpreter:

(I expect he means track.)

Q. Did you work any at the turpentine business?

A. No, sir.

Re-Direct Examination.

Q. After you were whipped, and after you were taken into the buggy, did you have a conversation or did Sandor speak to you about the whipping?

A. He says the buggy was going pretty rapidly, and Mr. Sandor told him that these two Englishmen, he says would have shot you if it had not been for me, and finally he wanted to ask him some questions, and Sandor just cursed him out, and after that he did not say anything more about it at all.

Q. Now, when you were here testifying before in court before you went to jail was not Mr. Newlander here present all the time that you were talking answering questions?

A. He says he was here and Mr. Newlander was talking to him, but he was not talking much to Mr. Newlander.

Q. Now, when you testified before the Court sitting here, was not Mr. Newlander looking at you when you were talking?

A. He did, he says Mr. Sandor was here, too.

Q. Now, did you stop at any other village on the way back to Lockhart other than the place where they come out smoking cigars?

A. He don't remember; he don't know for sure.

Q. Did you go straight to Lockhart from the little village where the men stopped at the restaurant?

A. Yes, sir.

Q. Was the testimony that you gave in Court that has
been read, parts of it here, read to you after you
199 testified, was it ever read to you or did you sign it?

A. No, they did not read it to him.

Q. What time was it that Grace, Sandor and Gallagher met you in the road?

A. He says he don't know for sure, but it might have been between three and four o'clock in the afternoon.

Re-Cross Examination.

Q. You testified on two different days before the commisioner at different times?

A. He was called here twice on the 31st of July and the 4th of August.

Q. Was Mr. Newlander here the first time you testified?

A. Yes, sir; he was here the first time.

Q. What you testified to on that occasion was the truth, was it?

A. Yes, sir; he told the truth, he says.

Q. Do you mean that Mr. Newlander was here in the court room when you were testifying the first time?

A. He says he don't remember, but he says he was here in and out.

Q. Was Mr. Newlander the second time you testified on the 4th of August?

A. Yes, sir.

Q. In the court room?

A. He says the first time he knows he was here inside, but the second time he don't remember whether he was in the court room or not.

Q. Was he here at all, in town?

A. Yes, sir; he was here.

Thereupon the Government called as a witness one J. W. RAFFORD, who being duly sworn, testified as follows:

Direct Examination.

Q. What is your name?

A. J. W. Rafford.

Q. What is your business?

A. Carpenter work.

Q. Where are you living at the present time?

A. Pensacola.

Q. Where did you live last July?

A. Lockhart, Alabama.

Q. Were you working and for whom?

A. I was working at Florala at the time.

Q. Were you at Lockhart about the office there some time about the middle of July this year?

A. Yes, sir; I was around there almost every night.

Q. Do you know Dr. Grace?

A. Yes, sir.

Q. Do you see him here?

A. Yes, sir; I am well acquainted with him.

Q. Were you acquainted very well with all of the bosses of the Jackson Lumber Company?

A. Not very well, I knew them by sight, and worked under them.

Q. Did you see Dr. Grace with any foreigner about the office of the Jackson Lumber Company about the middle of July late in the evening?

A. No, sir; I did not see him with any foreigner.

Q. Did you have any conversation with Dr. Grace?

A. Yes, sir.

Q. State when, about what time of day, and where?

A. I was coming from my work; it was after
201 six o'clock and I passed the store, and a crowd was
around there, and I asked what was the matter, and
they said they had just brought a man in from out in the woods, and I went over and sat down, and he stops and talks to me.

Q. What was said between you?

A. I was kind of huffy when I sat down there, and I made the expression, saying it was not right to do such a thing, a man working for the company, and do such things, as far as going and bringing a man back with dogs, that it was a pretty bad situation; and Dr. Grace spoke up and told me what I got to say about it? You have got no string on the company, and don't owe them anything.

Q. That conversation was in reference to bringing back a man—you say the man had just been brought back?

A. Yes, sir.

Q. Did anybody have hold of him at the time?

A. No, sir.

Q. Where was this man—was he in the buggy near where you were talking to Dr. Grace?

A. In front of us out in the middle of the street.

Q. Was there anybody in the buggy at the time?

A. No, sir; two men were standing behind him. The man reading the paper and another man.

Q. Did you know him at the time?

A. No, sir; I didn't know his name, his first name; I knew him by sight.

Q. What was he doing?

A. Talking to this fellow that was brought in.

Q. Have you seen the fellow since that time, the fellow that was brought in?

A. No, sir.

202 Q. Do you think you would be able to identify him?

A. No, sir.

Q. You say this was about half past six in the evening?

A. Between six and seven o'clock.

Q. In the month of July?

A. Yes, sir.

Q. About what date?

A. I cannot recollect, but I should judge about the middle of July.

Q. Did you see what was done with the man that Sandor was talking to?

A. No, sir.

Q. How long did he stay there?

A. Five or ten minutes. I sat down there on the steps, my boy called me to him, spoke to me, and I went home with him.

Q. And in this conversation Dr. Grace admitted or did not deny that he had brought the man back?

A. I did not say anything about bringing him or not bringing him.

Q. Who said you had nothing to do with it?

A. He said I had nothing to do with it; that is what he said to me.

Q. Did you have any conversation with Dr. Grace after that about this affair?

A. Yes, sir.

Q. What was that?

A. I went to apologize if I had hurt his feelings, and I apologized to him; I said I did not mean to say anything to hurt your feelings; I did not know that you had anything to do with it.

Q. What did he say?

A. He said that was all right, he didn't have no hard feelings towards me. I understood him to say he had some
money in bringing the fellow back; they had some
203 money or something like that; there was money in it.

Cross Ekamination.

Q. How long have you lived at Lockhart?

A. Something over twelve or thirteen months; I think fourteen months altogether.

Q. Were you employed by the Jackson Lumber Company?

A. I was in the turpentine [business] but not at that time.

Q. You were afterwards employed there?

A. Yes, sir.

Q. Had you been before that time?

A. Yes, sir.

Q. You worked for them before and after?

A. Yes, sir; I worked under Gallagher for five months.

Q. Did you say you knew this man was in custody?

A. I did not know he was standing behind the buggy talking to that gentleman there.

Q. You do not know whether he was in custody or not?

A. No; they just said they brought him in the buggy.

Q. Who said that?

A. Some of the boys said they had just brought in a man in the buggy.

Q. That was as you were going home?

A. As I was going home.

Q. How far were you from the buggy when the remark was made?

A. Eight or ten rods away.

Q. Where was Dr. Grace—at the buggy?

A. I never seen him until he spoke to me when I sat down.

Q. You do not know who he was—he was just brought back?

A. My boy said so; he was talking and the other young fellow with him.

204

The defendants' counsel did then and there move the Court to strike the testimony of this witness that somebody said just brought back, not in the presence of any of the defendants; which motion was granted.

Q. You said just now that Dr. Grace did not say anything about where or about whether he had been brought back, or had been brought back?

A. No, sir.

Q. He had nothing to say about whether he was brought back or not?

A. No, sir.

Q. He did not say whether he was in custody or not?

A. No, sir.

Q. You walked up and made some remark about the treatment of the men and he asked what business it was of yours, or something to that effect?

A. Yes, sir.

Q. Now, on the following day you had a conversation with him—was it the following day?

A. I could not say whether it was the day or not—shortly afterwards, any way.

Q. Is your memory sufficiently clear for you to remember exactly what it was you said to him?

A. I could not say all I said; I was a little mad at the time.

Q. I mean when you went up to apologize?

A. No, sir; I could not tell what I said; I said I was sorry for what I said; I didn't know that he had anything to do with it.

Q. It was in reply to that that he made this remark?

A. Yes, sir.

205 Q. Do you remember just what remark he did make to you?

A. He said that is nothing, that is all right, about like that; I said I was sorry if I had hurt his feelings, I did not mean to hurt his feelings, I didn't want to be angry with anybody.

Q. Who was present at the time; can you give me the name of anybody who was present when you apologized?

A. Just myself alone.

Q. Where were you?

A. Right by the corner of the dry sheds about the blacksmith shop.

Q. You say this was about the middle of July—can you give me the day of the week?

A. No, sir.

Q. You have no method of telling?

A. No, sir; I do not remember the day of the week.

Q. You say something like it—

A. He spoke something, said something about money, owed him, something like that.

Q. Who said it?

A. He said I owed some money.

Q. That was all he did say?

A. That is all I did say; he did not have any hard feelings towards me at all.

Q. He did not say anything about any indebtedness?

A. Something like that, owed him.

Q. Well, did he say owed him or did he say I have some money in that—?

A. Some money in this case, or owed some money.

Q. You do not know which?

A. He spoke something about money it it, or money out.

Q. Were you discharged by the company?

A. No, sir.

206 Q. What nationality are you?

A. Irish and Scotch.

Q. Were you born in this country?

A. I was born in the State of Maine.

Q. When did you come South?

A. I came South a year ago the 17th day of last May.

Q. For what purpose?

A. To work for the Jackson Lumber Company.

Q. You came down with some of these men in this recruiting agency?

A. No, sir; a lot of Wisconsin and Michigan men came down at that time.

Q. Did you come by reciving employment through an agency?

A. Yes, sir.

Q. Now, are you known by any other name there or not than the name of Rafford?

A. Not as I know of, only a nickname.

Q. What do they call you?

A. Windy Jim.

Q. You say you were not discharged?

A. No, I quit, once I quit the camps, once, I was not discharged, though.

Q. What department did you work in?

A. At the camps?

A. [Q.] Yes?

A. Most everything; I drove a team a little while; I worked teaming awhile and sawed awhile; I sawed first.

Q. What did you do after that?

A. I come down and went to work; carpenter work.

Q. You mean for the company?

A. Yes, sir.

Q. You mean at Lockhart?

207 A. Yes, sir.

Q. Whom did you work under while you were driving teams and sawing?

A. Two different bosses there; Mr. Bellinger was one; he was my main boss in the woods.

Q. Did you ever work under Mr. Sinquefield?

A. Yes, sir.

Q. Where?

A. At Lockhart.

Q. Did Mr. Sinquefield discharge you there?

A. No, sir.

Q. He did not?

A. No, sir; Mr. Sinquefield never discharged me. Him and I always got along good together.

Q. How long did you work under Mr. Sinquefield?

A. That is something I could not say. I worked all the time I was there, except about two weeks I was away from Lockhart, off working for somebody else.

Q. Did you work a good portion of this time under Mr. Gallagher?

A. About five months.

Q. During what months of that time—

A. Mr. Gallagher, as head boss, and Mr. Bellinger was next boss.

Q. My question was perfectly simple—what months were those?

A. Started the 18th day of May.

Q. And you worked about five months under Mr. Gallagher, beginning about the 18th day of May?

A. Yes, sir.

Q. Was that continuous work?

A. Right along all the time for five months.

Q. You were in contact with him very frequently?

A. Yes, sir; every day I was.

208 Q. You saw him round the works?

A. Yes, sir.

Q. Any of the men there at work besides you?

A. Lots of them.

Q. A great many men besides you at work?

A. Yes, sir.

Thereupon the Government called as a witness one C. FRANK DONKEY, who having been duly sworn, testified as follows:

Direct Examination.

Q. Your name is C. Frank Donkey?

A. Yes, sir.

Q. Where is your home?

A. It was Buffalo, New York.

Q. Did you work for the Jackson Lumber Company during the month of July this year?

A. Yes, sir; I worked six weeks.

Q. Do you know about what time you reached there?

A. Yes, sir; I got down the 11th of July.

Q. What did you work at?

A. I worked there for five days in the kitchen the first time, and then was sick and came down to Lockhart, and six days stayed there, and then went into the saw mill, and worked in there for one day, and after that got to driving a horse for four days, and then took, he got me to driving the mule.

209 Q. Were you there about the camp or the office at Lockhart during the month of July?

A. Yes, sir.

Q. Did you, while thereabouts, see a man, a Hungarian, brought back there by anybody?

A. Yes, sir; I saw Mr. Gallagher brought him back, and a few other bosses I seen around the office, and I see them, I do not know what Mr. Gallagher told him, but I saw him take the buggy whip and hit him over the head two times.

Q. Do you know Dr. Grace?

A. Yes, sir; Dr. Grace got him here and put him in the buggy, and says, I will give you blue eyes if you do not go back in the woods and go to work.

Q. He took him in the collar?

A. He catch him right here.

Q. Did you know Sandor?

A. Yes, sir; I know Mr. Sandor, but didn't see him then.

Q. About what time was that in July?

A. That was about July the 19th—Thursday night, between seven and eight o'clock.

Q. Did you see any dogs about the buggy at the time? Did you see these people when they came up?

A. No, sir. I saw all the people come around there—a lots of times buggies stopped there; so many people come around Mr. Gallagher—

Q. When you saw the buggy there was a collection of people around it?

A. Yes, sir.

Q. And you saw Mr. Gallagher strike him two licks with the whip?

A. Yes, sir.

Q. And Dr. Grace took him in the buggy like this, and then the buggy went away off in the woods?

210 Q. Did you know the Hungarian?

A. I know him when I see him the second time. When I saw him the first time he came down to Lockhart.

Q. Is that the man there?

(Mahily was here brought into court, and produced before the witness.)

A. Yes, sir; he is the man.

Q. Was he the man that Dr. Grace had hold of?

A. Yes, sir; he catch him right here.

Q. Is he the man that Gallagher hit two licks?

A. Yes, sir.

Q. You said you had seen the man before this?

A. Yes, sir; when he came down to Lockhart.

Q. You have seen him, of course, since that time?

A. Yes, sir.

Q. Did you know the man's name then?

A. No, sir; I did not know his name.

Q. Did you know a man by the name of Crum?

A. Yes, sir; he worked in the saw mill at Lockhart.

Q. Did you hear any conversation between Crum and Mr. Harlan, while Crum was working there?

A. Yes, sir; one time in the office I heard Mr. Harlan say I am going to arrest you for three months if you do not go.

Q. Who was it said that?

A. Mr. Harlan said that.

Q. Do you know whether Crum had been away or had left the company before that time?

A. I do not know anything about it.

Q. You left there—when did you leave the company's employ?

A. The 18th or 19th of August.

211 Q. Did you apply to Mr. Harlan before this time for permission to leave the camps to go anywhere?

A. Yes, sir; I went Monday morning and asked Mr. Sandor, he was to give me another job; Mr. Sandor say you wait until next morning, and I wait until next morning, and I went again to Mr. Sandor and he sent me to Mr. Wilson, and I asked Mr. Wilson for a job, and he did not want to give me a job, and he told Mr. Sandor, and he said you wait and I will make you something, and don't tell me at all anything he is going to do, but the next morning he says he is going to see what he can do, and Mr. Harlan asked me what I wanted, and he told Mr. Sandor to come in the office and he asked me what you want, and I say I want a job, I wants work; he said what you want to do, and I said the doctors say I cannot work in the sun, because I got hay fever; I wanted to get some easy job; and he say cannot get an easy job for over sixty or seventy cents; then he told Mr. Sandor, ask him how much I owed for board and the other fellow that was with me in the office.

Q. Who was the other fellow?

A. Otto Garroy. He came down with me to Lockhart, and Mr. Sandor told Mr. Harlan that I owed for board twelve dollars, and the other fellow owes six dollars for board; Mr. Harlan says, boys, what can I do for you? You two boys can go away and I will pay your board. Then I asked Mr. Harlan if he was going to send us back to New York, and he says I cannot help you, nothing else? That is all I can do; then I went out of the office and Mr. Sandor come and tell us he make us a small paper, if we go, so the sheriff shall not catch us, and he write a piece of paper out, it was a regular passport—

Q. Have you got that paper or passport with you?

A. No, the other man kept it.

Q. Where is that other man there.

A. I think he went to Mobile, but after I hear now he is gone to New York.

212 Q. So he has possession of that paper?

A. Yes, sir.

Q. That paper was a pass?

A. It was a regular passport—"Deputy sheriff, please let these two men—"

Defendants' counsel did then and there object to the testimony on the ground that it was not the best evidence, that the paper itself was the best evidence of what it contained.

But the Judge then and there overruled said objection; to which ruling of the Court defendants did then and there except.

Q. You say Mr. Harlan gave you this paper?
A. No, sir; Mr. Sandor.

By the Court:
Ask him what efforts were made to locate the man.

Q. Did you know the name of the party that was with you at the time you got the paper?
A. O. Garrey.
Q. Do you know where he went to?
A. He came to Pensacola, on Sunday he went to Mobile.
Q. Have you written over to find whether he is over there or not?
A. I written to one man Saturday, but he says he cannot find this man.

By the Court:
What the man wrote back to him is not evidence, gentlemen.

Q. Did you try to find out if he was there in any other way?
A. Yes, sir. He says he cannot find him in Mobile, that he is gone to New York.
Q. Never mind that; that was only this week you ascertained he was not in Mobile?
A. Yes, sir.
213 Q. You say that the man came to Pensacola with you?
A. Yes, sir.
Q. Do you know he left Pensacola?
A. Yes, sir; I was with him to the boat when he went to Mobile.
Q. When was that?
A. That was Sunday.
Q. I mean about the man who had the paper with you—this was the man that got the paper?
A. He came down here Friday night to Pensacola, half past 11, and next Sunday at 8 o'clock boat leave Pensacola going to Mobile, I was with him to the boat.
Q. How long ago was that?
A. It was about the 21st of August.

Q. The day after he arrived here?
A. Yes, sir.
Q. That was in August?
A. Yes, sir.

By Defendants' Counsel:
I will get you to write that name for me, I cannot understand it.
A. Otto Garay.
Q. When was the last time you saw Mr. Garay, what month?
A. In August; last Sunday when he was going to Mobile.
Q. Were you down here as a witness before the Commissioner, before Mr. Marsh, the Commissioner, in the investigation of this case?
A. Last week I was here.
Q. No, I mean last July?
A. I was not down here at that time.
Q. You did not go before the commissioner and testify in July?
A. No, sir.
Q. Where were you in July?
A. At Lockhart.
Q. When did you give this paper to Mr. Garay?
214 A. Mr. Sandor give it to Mr. Garay, and he only showed me the paper, and I read it over.
Q. When did you read the paper over?
A. Up there in Lockhart.
Q. There in the office?
A. No, in the back of the office.
Q. You read the paper?
A. Yes, sir.
Q. Do you know all the contents of that paper?
A. I know a few words of it, but not all of that; I cannot remember all of it.

By Government's Counsel:
Do you remember who the paper was signed by?

A. I think it was signed by Mr. Harlan.

By Defendants' Counsel:
Not what you think.

By Government's Counsel:
Q. What is your recollection as to who signed it?

A. I do not know who signed it; Mr. Harlan's name was there, but I do not know who signed it—Mr. Sandor gave it to us.

Q. Mr. Harlan's name was on it?

A. Yes, sir.

Q. Mr. Sandor gave it to you?

A. To Mr. Garay.

Q. Was it partly printed and partly written—those pieces of paper?

A. Just a piece of paper like writing paper.

Q. Do you know whose name was on it? On the face of it opposite Mr. Harlan's?

A. No, just the top—"Deputy Sheriff"—I think it was—"Please let these two go."—

Defendants' counsel did then and there object to the witness' testifying as to the contents upon the ground 915 that it is not shown that he knows the contents of the paper, and upon the further ground that it appears from the witness' own testimony that he knows only a small portion of it, that is a few words.

But the Court did then and there overrule the said objection, to which ruling of the Court the defendants did then and there except.

Q. Well, now state as best you can, what was on that paper?

A. "Deputy sheriff, please let these two men go," or something like that. There was only a few words on it. About three or four lines of it, and it was signed by Harlan; the first three words was—

Q. That was addressed to the deputy sheriffs?

A. Yes, sir.

Q. "Please let these two men go?"

A. Yes, sir.

Q. Well, now, how did you come to get such a paper; who did you see and find out from that you had to have such a paper?

A. Mr. Sandor told me have to have the paper because the deputy sheriff would bring us back when we don't get anything.

Q. That you would have to have the paper or the deputy sheriff would bring you back?

A. Yes, sir.

Q. So it was out of abundance of caution that you got this paper?

A. Yes, sir.

Q. Did you go to Mr. Harlan before you got that?

A. Yes, sir; we saw Mr. Harlan in the office, and Mr. Harlan told us can go, and after we went in the back, and then Mr. Sandor gave us this paper.

Q. That was when you left there for good?

A. Yes, sir.

216 Q. You came on to work with that party?

A. Yes, sir.

Q. Where did you go to work here?

A. I worked here for Mr. Roscoe, and then the Goulding Fertilizer Company, and printing press.

Q. You are working for the Goulding Fertilizer Company at the present time?

A. Yes, sir.

Q. Do you know Mr. Lemater?

A. Yes, sir.

Q. Do you see him over there?

A. Yes, sir; right there, the last man with the eyeglasses on.

Q. Did you go out to his camps any time out there?

A. Yes, sir; at first the first five days I was out in the kitchen as cook.

Q. At the turpentine camp?

A. Yes, sir.

Q. Did you know of any man being brought back there while you were there?

A. Yes, sir; just one time, it was Friday afternoon after one o'clock; Mr. Lemater was there and the carpenter came down, and said two Germans men ran away and Mr. Lemater told him I go kill him, and he takes his gun, and follow after these two men, and brought them back, and told them, I shall tell these two men they shall not run away because they owe the company for transportation.

Q. Mr. Lemater told you to tell them that?

A. Yes, sir; and he took away their trunks and carried them into the kitchen and the same night Mr. Sandor come down and took all the German men into Lockhart from the turpentine camp.

Q. Now, when was it Mr. Lemater took down his gun; was it when the carpenter told him the two German men had run away?

217 A. Yes, sir; and he followed the two, carpenter and the cook and Mr. Lemater went off for the two German men.

Q. And after he brought them back he asked you to interpret to the two Germen men?

A. Yes, sir.

Q. And then it was he said they owed for transportation and could not run away?

A. Yes, sir.

Cross Examination.

Q. What nationality are you?

A. Hungarian.

Q. What religion, what church?

A. Greek Catholic.

Q. How many languages do you speak?

A. The Hungarian, English and—

Q. When did you first go to the Jackson Lumber Company to work?

A. Came on the boat the 7th of July, and came down to Lockhart the 11th of July, Wednesday afternoon.

Q. You left New York the 7th?

A. &th of July.

Q. And reached Lockhart on the 11th?

A. Yes, sir.

Q. How many came down with you?

A. Thirty-one; I was the thirty-second man.

Q. What did you go to do when you got there—working in the kitchen?

A. Yes, sir.

Q. You worked there for how long?

A. Five days in the kitchen.

218 Q. Under whom were you working then?

A. Mr. Lemater then.

Q. Was that in the turpentine camp or the logging camp?

A. The turpentine camp.

Q. Did you get a settlement when you left there; were you furnished your time when you left there?

A. I was sick and Mr. Sandor carried me to Lockhart, and I stayed there for six days; I was sick for six days.

Q. Mr. Sandor carried you from the turpentine camp to Lockhart?

A. Yes, sir.

Q. You were sick how long?

A. Six days.

Q. And after you were cured where did you go?

A. In the saw mill.

Q. Did you speak for employment at the saw mill?

A. Yes, sir; I worked in the saw mill; I made a contract for pay one dollar and a half per day, and only got one and a quarter.

Q. You applied for that work?

A. Yes, sir.

Q. To whom did you make application?

A. To Mr. Newlander, give me the card, "Please care for this man for second foreman." On the other side was Mr. Newlander's name.

Q. Where is that card?

A. Mr. Newlander took it away when he came down to Lockhart.

The defendants did then and there move to strike the testimoney of this witness with reference to the contents of the card, until notice had been served upon the defendants to produce it; which motion was then and there granted.

Q. You understand my questions, don't you?

A. Yes, sir.

219 Q. Well, answer them then, and do not travel outside and answer something else.

A. All right.

Q. To whom did you apply for work in the mill?

A. The Jackson Lumber Company.

Q. What particular person of the Jackson Lumber Company?

A. Contract was made to work in the lumber mill.

Q. Don't tell me what contract was made. What particular person when you went to Lockhart did you apply to for labor in the mill?

A. I don't understand.

Q. Did you go to any particular person to ask him for employment in the mill when you went down to Lockhart after you got well?

A. Yes, sir; Mr. Sandor met me there.

Q. You went to Mr. Sandor?

A. Yes, sir; Mr. Sandor met us in the train.

Q. I am not going back to the train, I am referring to the time you had fever, and was sick, and had gotten well; did you at that time go to any particular man there to give you employment?—at any particular place?

A. Mr. Sandor come in the hotel when I was sick and he told me I have to go to work again?

Q. And you went to work at the mill?

A. Yes, sir.

Q. After talking to Mr. Sandor?

A. Yes, sir.

Q. How long did you work at the mill?

A. One day.

Q. What did you do then?

A. Drove horses.

Q. Under whom were you working the day you worked in the mill?

A. Mr. Wilson.

220 Q. Did he discharge you from that employment, or did you quit?

A. No, he asked Mr. Grace if he should give me some easy job, and he said I could drive.

Q. Did Mr. Grace have anything to do with the operation of the mill?

A. Yes, sir.

Q. What kind of work were the horses engaged in about the mill or in the woods?

A. No; carried horses to the wagon.

Q. Did Dr. Grace have anything to do with the operation of the mill, or control any of the works there that you know of?

A. I say no; he cares for the horses and everything like this.

Q. Just a veterinary surgeon?

A. He told me so; I don't know.

Q. Then he gave you employment to drive the horses?

A. Yes, sir.

Q. How long did you work there?

A. Four days.

Q. Under whom were you working when you were working at that—who was your boss?

A. Dr. Grace.

Q. Were you discharged from there or did you quit?

A. No; he was get another man to drive the horse, and gave me to drive the mule.

Q. How long did you drive the mule?

A. I could not tell you how long it was.

Q. A month?

A. I could not tell you.

Q. As much as a month?

A. Don't know; it was a few weeks, can't tell you for sure.

Q. Where did you go from there?

221 A. Then I went, when I left this they give me a job in the saw mill again.

Q. And you continued to work in the saw mill until you left there?

A. Yes, sir; I fell down in the saw mill, and so I was sick; I hurt my back and then it was the time I asked Mr. Sandor to give me an easy job, and he sent me to Mr. Wilson, and he won't give me any job.

Q. You applied to the different persons for a job?

A. Yes, sir.

Q. And they refused to give it to you?

A. Yes, sir.

Q. When was it, you say, they struck a man there; you spoke of having seen some one strike a man with a whip?

A. It was July the 19th, Thursday, between seven and eight o'clock, in the evening.

Q. You saw them when they brought him up there?

A. I only saw when they came up in the carriage.

Q. You did not see—

A. I never saw when they came down.

Q. You did see the carriage?

A. I saw the carriage, but not when they stopped; I didn't see when they come.

Q. You saw it, though, after it stopped?

A. Yes, sir.

Q. How many horses did they have to the carriage?

A. One.

Q. What kind of a horse was it?

A. It was a brown horse; they used him at the log camp.

Q. Was the man in the buggy at the time you saw him or out?

A. Nobody in the buggy.

Q. Do you know anything that you observed on the 25th day of July?

222 Q. Do you know of anything that you observed on the 17th day of July?

A. No; I only just know the 8th day of July, when men came down from Lockhart, another bunch came down to Lockhart again.

Q. Were you there at the trial of these gentlemen the other day?

A. Who?

Q. Mr. Harlan, Mr. Huggins and Mr. Hilton?

A. No.

Q. You were not at the trial?

A. No, sir.

Q. Were you put upon the stand as a witness the other day?

A. Last week?

Q. That is what I am talking about.

A. Yes, sir.

Q. You were on the stand and testified?

A. Yes, sir.

Q. Have you been talking to any of the witnesses in regard to this case?

A. Not any of the witnesses.

Q. Have you not been talking to any of them?

A. I talked, but not about this case.

Q. How did you come to know that this was on the 19th day of July, that you saw this man struck?

A. Because I know he came down on the 11th of July. This was Wednesday, and this was the following Tuesday, and it has got to be the 19th.

Q. How do you know it?

A. Because I saw it.

Q. How did you know it was the 19th, if you had not known it to be the 19th—might Wednesday not be the 17th?

A. But not in July.

223 Q. What I want to know is what means have you of knowing that it was the 19th?

A. Because I know everything that happened. I got it in my mind; I got it in my mind when Mr. Freeman's brother asked me; I told him all right; that was the first day.

Q. I am not asking you that; I am asking you if you have made any examination, or talked to anybody to fix that date in your mind?

A. No; Mr. Sheppard asked can I remember, so I hunted it up, and I remember.

Q. Don't you know as a matter of fact that you worked for a period of 11 days, you arrived on the 7th, and worked continuously for a period of 11 days in the turpentine camp before you got sick, and was in the turpentine camp on the 19th day of July, and was in Lockhart on the 19th day?

A. I came down Wednesday, and on Tuesday morning came down to Lockhart.

Q. How much time did they give you the time you worked in the turpentine camp?

A. No, sir; I don't get anything.

Q. Did they furnish you any statement of the time you worked there?

A. No, I never received a penny.

Q. Did they furnish you with a statement of the time? Did the time keeper give you a statement of the time?

A. No; don't get nothing for my work in the turpentine camp.

Q. Now then, you say two licks, this man was struck two licks?

A. Where?

Q. At Lockhart on the 19th day of July, between seven and eight o'clock in the evening?

A. Yes, sir; I saw Mr. Gallagher whip Mr. Mihaly.

Q. Would you recognize him if you were to see him again?

A. Who?

Q. Mr. Mihaly?

224 A. Yes, sir.

Q. You did not know it was Mr. Mihaly then, did you?

A. No, not his name.

Q. What did you say to him?

A. When?

Q. At that time?

A. Nothing, I was up on the gallery on the hotel.

Q. How far were you awy?

A. About thirty or forty feet.

A. About forty feet, do you think?

A. Yes, sir.

Q. You were on the porch or gallery?

A. I was on the gallery up there.

Q. Up stairs of down stairs?

A. Up stairs.

Q. Will you locate that hotel for me, and where these men were?

(Witness here draws diagram.)

Q. Now, these other two men that you spoke of, the Germans, you said you saw them brought back, or not?

A. I saw them brought back, I was just in the kitchen, and I will tell you again the whole story. The carpenters come in and told Lemater—

Q. Wait a moment—

A. Told Lemater that two Germans run away, and Lemater told them going to kill them, and took his gun and followed them with the two carpenters, Mr. Lemater and the cook.

Q. Went after these Germans?

A. Yes, sir.

Q. Do you know when the Germans left?

A. The same night.

225 Q. Did you know the Germans?

A. I know him, but I don't know his name; but I know him because he came down in the same bunch.

Q. When was it they were returned?

A. It was before Mr. Sandor took them to Lockhart.

Q. Before he carried you to Lockhart?

A. No; the Germans men.

Q. What day of the week was this?

A. Friday.

Q. That is when they were returned? When did you look for that incident—fix that date?

A. Because first day when I started to work.

Q. Who?

A. All the fellows who worked in turpentine.

Q. What month was it?

A. July.

Q. What date?

A. Friday the 13th.

Q. Friday, July 13th?

A. Yes, sir.

Q. That is the date they were brought back?

A. That is the day when they start for work and the day when they run away, and the day brought back, and the same night carried them to Lockhart.

Q. What was the trouble with you?

A. We, me, when?

Q. When you were sick?

A. I had fever.

Q. Had you missed the fever and Mr. Sandor came after all of you and took you down to Lockhart?

A. I was sick six days.

226 Q. Were you in bed?

A. Yes, sir; for a day; and the next morning I got up and stayed on the gallery.

Q. You were up the rest of the time?

A. Yes, sir.

Q. Do you know of your own knowledge; did you see these men leave there?

A. Who?

Q. These two Germans?

A. No, the two Germans were not in the hotel.

Q. You mean they were not here?

A. No.

Q. Where was it they left—what particular place did they leave from?

A. Where?

Q. I am asking you what place did they leave from, the turpentine camps or was it down at Lockhart?

A. It was down at Lockhart when the men run away in the turpentine camp.

Q. It was at the turpentine camp that they left, and it was at the turpentine camp that they were brought back?

A. Yes, sir.

Q. What time of day did they return with them?

A. When he returned it was after one o'clock, dinner time.

Q. Who was with them when they returned with these two Germans?

A. The two Germans mens, Mr. Lemater, and two carpenters, and the cook.

Q. All came back with them?

A. Yes, sir.

Q. Did you see them all when they left that morning? I mean these men who went out after the Germans?

227 A. I saw them when they left the kitchen to follow the Germans mens.

Q. When was it you were told to have this conversation with these Germans, and to interpret what Mr. Lemater said to you?

A. When the two Germans mens were brought back.

Q. Immediately?

A. Yes, sir.

Q. Right then?

A. Right in front of my kitchen.

Q. Did you tell them?

A. I told the two Germans mens what Mr. Lemater told me.

Q. What was it that Mr. Lemater told you?

A. Says cannot go away because owes transportation.

Q. You don't know the name of either German?

A. No.

Q. Have you seen them since you have been here?

A. No, not in Pensacola.

Q. How long did they remain there; do you know of your own knowledge?

A. No, I do not know; when I came down Tuesday morning in Lockhart there was not there the two Germans men.

Q. Now, when you left Lockhart, which way did you go, when you left there finally?

A. First went to Florala and met the train, and come down to Pensacola.

Q. Did anybody stop you?

A. No.

Q. Did anybody undertake to stop you?

A. No.

Q. Nobody attempted it?

A. No.

Q. Did you not show that paper to anybody?

228 A. No; nobody asked for it; I could not show it, Mr. Garay got it, not I.

Q. Were you and Mr. Garay together all the time?

A. Yes, sir.

Q. Did Mr. Garay show it to anybody?

A. No; just for me and himself.

Q. He showed it to nobody?

A. No.

Q. Nobody attempted to ask you for it?

A. No.

Q. Nobody attempted to stop you?

A. No.

Q. You went before a body of men and testified, didn't you, before the grand jury?

A. Where?

Q. Here?

A. When?

Q. Upstairs?

A. No, sir; I was not upstairs.

Q. You never were upstairs before the grand jury?

A. No, I was not here then.

Q. Do you know what I mean by the grand jury?

A. I came after that.

Q. To whom did you first tell all this?

A. First time I told it to Mr. Sheppard here in the Court.

Q. Here in the Court?

A. Yes, sir; in the Court when he sent for me as a witness.

Q. You mean before you were put on the stand?

A. Yes, sir.

Q. When?

A. It was two weeks last Monday was two weeks ago.

229 Q. What day of the month was that?

A. It was the 11th.

Q. That was on the 11th?

A. Yes, sir.

Q. The 11th of this month?

A. Yes, sir.

Q. Do you know whether the grand jury was in session at that time?

A. I heard about it; it started on the 7th, but I had no time; I got my work.

Q. That was the first person you told this to at all?

A. Yes, sir; Mr. Sheppard; and when I come down to Pensacola I told Mr. Friedman.

Q. Were you summoned as a witness?

A. Yes, sir.

Q. You say a written paper was served on you to come to Court?

A. Come down to Court and tell Mr. Sheppard what I know.

Q. You mean without any subpoena?

A. Yes, sir; he sent for me; I got it home.

Q. Do you know when that was served on you?

A. I do not know what you mean.

Q. When was that paper delivered to you?

A. I do not know.

Q. When was it given to you?

A. I got here in this Court here at this office.

Q. You got it here in town?

A. Yes, sir.

Q. Then you came down here without the paper?

A. Yes, sir.

Q. You had your talk with Mr. Sheppard before you got the paper?

A. Yes, sir.

Q. You also told Mr. Sheppard [Friedman] about this?

A. Yes, sir.

230 Q. When did you tell Mr. Friedman about it?

A. The first time I came down to Pensacola.

Q. When was that?

A. That was on the following day, on Saturday—I come down on Friday.

Q. What day of the month was that?

A. That was on the 19th of August.

Q. Where were you brought up?

A. When?

Q. Where have you spent most of your life?

A. In Hungary. In Buffalo a few years; that is my home now.

Q. How long since you came from Hungary?

A. Seven years.

Q. How old are you now?

A. I am past twenty-four.

Q. And you have lived in Buffalo what part of that time?

A. Buffalo, New York State.

Q. What were you engaged in in Buffalo?

A. Six years.

Q. What were you engaged in in Buffalo?

A. I was in a restaurant, and then life insurance agent.

Q. How long were you in the life insurance business?

A. For eight months. I was collector, and a half a year doing ordinary business.

Q. What is ordinary business?

A. Writing big insurance. Write five hundred and one thousand dollars insurance.

Q. You quit that business to come down to Lockhart here?

A. No, sir; I left Buffalo and come down from New York.

Q. What did you do in New York?

231 A. I worked for bartenders.

Q. How long did you work at that?

A. I came down in February, and I stayed until July 7th, then I came down to Lockhart.

Q. You stayed there until you came away to come down here?

A. Yes, sir.

Q. Were you discharged as an insurance agent in Buffalo?

A. Yes, sir; I got a letter of credit, and I going to start in the life insurance business in Pensacola.

Q. Were you discharged in Buffalo?

A. Yes, sir; I got everything ready.

Q. How long before these two Germans—they left one night, were they brought back the next day?

A. They ran away at dinner time, and after one o'clock brought back; and Sandor brought them back, I told the same as before.

Q. They ran away at dinner time?

A. Yes, sir.

Q. And were brought back that night?

A. After one, when in dinner time.

Q. The following day?

A. No, the same day.

Q. They left at dinner time and were brought back the same day?

A. After one o'clock.

Q. Was it night or day?

A. Dinner time, cannot be night.

Q. Some people do have dinner at night?

A. I do not know, I never had dinner for night.

Q. Did you ever have lunch in the middle of the day, and dinner at night?

A. No; I had lunch after five o'clock for supper.

Q. You never have been at dinner at night?

A. No, sir.

232 Q. You never have heard of such a thing?

A. No, sir.

Q. Now then, you say it was some time after one o'clock; you do not know how long after one o'clock that they were brought back? That is what I want to get at?

A. Between one and two o'clock; I had no clock.

Q. They left about one you think or before one—between twelve and one?

Government's counsel did then and there object to the question and the Court ruled that the witness had already answered.

Q. Do you know whether these two Germans had run away, or whether they simply went off to change their employment?

A. They worked in the turpentine camp when they ran away.

Q. Do you know that they did run away?

A. Yes, sir.

Q. How do you know it?

A. Because they took their trunk, and was going away, and the two carpenters got him and brought him back in the kitchen.

Q. Do you know whether they were not out there in the woods at work when these men went to them?

A. They was out in the morning, but not in the afternoon.

Q. How do you know that?

A. They had their trunks with them.

Q. They had their trunks in their hands when they came back, but what I am talking about is did they have their trunks when they went away?

A. I seen Mr. Lemater bring them back with their trunks.

Q. When they went away, when he left—did you see him when he left?

A. No, sir.

233 Q. You do not know how they left?

A. No, sir.

Q. When they were brought back they were brought back with trunks?

A. Yes, sir.

Q. You do not know whether they were going off to go into some other employment or not, do you?

A. I don't know about that.

Re-Direct Examination.

Q. You do know that you heard Lemater and the carpenters, when the carpenters reported to him that the men had gone, don't you?

A. Yes, sir.

Q. And you heard Lemater say get a gun?

A. Get a gun and catch him.

Q. And then Lemater asked you to interpret and tell them they owed transportation to the company?

A. Yes, sir.

Q. And could not go away?

A. Yes, sir.

Q. Do you know what the meaning of the word "discharged" is? Were you discharged from the insurance company in New York, or did you quit?

A. I quit myself; I was in Buffalo myself.

Q. What age were you when you came to this county?

A. Seventeen.

Q. Have you been naturalized or filed your papers for citizenship?

A. I got my second paper in New York State.

234 Thereupon the Government called one H. K. CALDWELL, who having been duly sworn, testified as follows:

Direct Examination.

Q. Your name is what?
A. H. K. Caldwell.
Q. What is your business or occupation?
A. Farming.
Q. Where?
A. Near Laurel Hill.
Q. Were you living near Laurel Hill last July?
A. Yes, sir.
Q. Do you know Mr. Gallagher?
A. Yes, sir.
Q. Do you see the gentleman?
A. Yes, sir.
Q. Do you know the interpreter?
A. Yes, sir.
Q. Can you point him out?
A. Yes, sir.
Q. Do you know Dr. Grace?
A. No, sir.

Q. Were you in Laurel Hill about some time in July, and did you see these gentlemen, and hear inquiries they were making, and who they wanted to see?

A. Yes, sir; I was there in July, along about the middle of July, and they was talking to another man.

Q. Just tell first how they were traveling—what way?

A. Three of them all in a buggy, two on the seat, and one in the back end of the buggy.

235 Q. What sort of a horse were they driving?
A. A bay horse.

Q. What directed your attention first; how did you come to notice them?

A. They were riding in the road and I met them, and they was talking to Mr. Atwell, and somebody else, I do not remember who.

Q. Who is he and what is he—Mr. Atwell?
A. He is a man, sorter running a little butcher shop.
Q. He is not the deputy sheriff?
A. No, sir.
Q. You say you met them in company with him?
A. Yes, sir.

Q. What conversation took place?

A. As I walked up he says he had on a derby hat, and that you saw him on the train tonight, and if we don't get him, and he won't come out, take him out, get him out.

Q. They were talking that to Atwell?

A. Yes, sir; and some other man.

Q. Did you hear of any occurence the next day which would fix the incident in your mind about the time?

A. Yes, sir.

Q. Whipping a man there?

A. Yes, sir.

Q. When was the whipping alleged to have taken place—the same day you saw them?

A. Yes, sir; I heard of it the next day.

Q. About where was the whipping—who reported it—it was the day before the next day after you saw these men inquiring for this fellow?

A. I heard of the whipping next day.

Q. That whipping was in your neighborhood, was it?

A. Yes, sir; three-quarters of a mile from Laurel Hill.

236 Q. Did you ask them any questions as to what they were looking for the man for?

A. Yes, sir; they had started to turn and go back and I asked what he had done, had he stolen something, and he said yes, all will steal.

Q. That was the reply of who?

A. That was the reply of Mr. Gallagher.

Thereupon the Government called as a witness one JOHN C. SATTERWHITE, who having been duly sworn, testified as follows:

Direct Examination.

Q. Where were you employed in the month of July and August of this year?

A. Lockhart, Alabama.

Q. What was your business?

A. Telegraph operator for the Jackson Lumber Company.

Q. Where at?

A. Lockhart.

Q. Is that company connected with the Western Union in any way, or is it a private wire?

Q. Regular Western Union office.

Q. Run by the company?

A. Yes, sir.

Q. Do you know Mr. Harlan?

A. Yes, sir.

Q. Do you know Mr. Lemater?

237 A. Yes, sir.

Q. Do you know Dr. Grace?

A. Yes, sir.

Q. Do you know Archie Bellinger?

A. Yes, sir.

Q. Do you know Big Harry or Harry Halverson?

A. No, sir.

Q. Do you know what Mr. Harlan's connection with the company is?

A. Yes, sir. He is the manager.

Q. General manager?

A. Yes, sir.

Q. Do you know Mr. Sandor?

A. Yes, sir.

Q. Do you know what Mr. Sandor's relation to the company is?

A. Yes, sir.

Q. What?

A, He is naval stores clerk for the Jackson Lumber Company.

Q. Where is his office?

A. In the rear of the building of the Jackson Lumber Company office.

Q. Where is it situated?

A. At Lockhart.

Q. Where is the telegraph office?

A. It is in one room of the office of the Jackson Lumber Company.

Q. Did you ever have any duties to perform except the taking and receiving of messages?

A. Yes, sir.

Q. What were those duties besides being telegraph operator?

A. Clerical, work in the office.

Q. Are you such now?

A. No, sir.

238 Q. When did you quit the service of the company?

A. On the 26th of November, I believe it was.

Q. Since you were here before?

A. Yes, sir.

Q. Now examine and see if you find any dispatches of your office which were recived by you as operator while at Lockhart in July—first see if you find a telegram from Atwell? (Handing witness a bundle of papers.)

A. I do not see it here, not the one I handled.

Q. First, identify those dispatches, whether you ever saw them before?

A. Yes, sir.

Q. You handled them as operator?

A. Yes, sir.

Questions by Defendants' Counsel:

Q. One of these is the original—is that from your office?

A. Yes, sir.

Q. The other was sent from some other office?

A. Yes, sir.

Q. You have not the original of the other?

A. No, sir; that is a water copy of the original—that is a copy we keep in our files.

Q. Did you see the copy taken of this?

A. Yes, sir; I received the copy myself.

Q. You received a copy?

A. Yes, sir.

Q. I am talking about the original, this was sent from where?

A. The water copy from Laurel Hill, Florida.

Q. Did you make the copy yourself?

A. Yes, sir.

339 Q. Of the original?

A. Yes, sir.

Q. Did you go to Laurel Hill to make it, the message was sent from Laurel Hill?

A. Yes, sir.

Q. You were not operator in Laurel Hill?

A. No, sir.

Q. The message was sent from Laurel Hill?

A. Yes, sir.

Q. Transmitted to your office?

A. Yes, sir.

Q. And you only get the transmitted message or original message as written out in the office at Laurel Hill?

A. Yes, sir.

Q. Did you make this copy from the Laurel Hill office yourself?

A. I made it, the copy from the copy sent to me.

Q. I am talking about the original?

A. That is at the Laurel Hill office.

Q. You do not know whether it is a copy or not, you only know it is a copy of the message received?

A. Yes, sir.

Q. You do not know whether you received the copy of the message—whether the message you received was identical with the original in the Laurel Hill office?

A. No, sir; I could not say as to that.

By Government's Counsel:

Q. What is your method when you receive messages from other places—you spoke of water copies?

A. Yes, sir.

Q. Explain water copies.

240 A. You take a small sheet, you see there, lay it down in a pan of water, let it get saturated through, and lay it on top of the message and let it copy, and the message is then run through a press and it makes a copy.

Q. This is identical with what you received from Laurel Hill?

A. Yes, sir.

Q. What did you do with it?

A. The original message?

Q. Yes.

A. Delivered it to Mr. Harlan.

Q. In person?

A. Yes, sir.

Q. What directions did he give you?

A. He requested me to answer it or to have it done—he did not request me to answer it, but to have it done.

Q. By whom?

A. O. S. Sandor.

Q. Did you carry out his directions?

A. I did.

Q. In other words, you delivered the message from Mr. Harlan to Mr. Sandor?

A. Yes, sir.

Q. And did Mr. Sandor then make out the message?

A. Yes, sir.

Q. And you transmitted that over the line as operator?

A. I did.

The Government's counsel did then and there offer in evidence copies of the telegrams above testified to, but to the

introduction of such documents defendants' counsel did then and there object upon the ground that it is a copy, and upon the further ground that no notice had been served
241 upon the defendants to produce the original.

But the Court did then and there overrule such objection, to which ruling of the Court defendants did then and there except.

Q. Tell me the method of your receiving and how you got it, and where you got it?

A. Say, for instance, this is my message to be copied. I lay that on top, and put it down in a pan of water, and take it out and lay it down on the face of the paper, and run it through a wringer, like this, and get a copy.

Q. As a matter of fact, what you delivered to Mr. Harlan was a copy?

A. No, I delivered to him the original.

Q. Both purported to be something?

A. Yes, sir.

Q. And you simply kept that on file as a duplicate of what you received?

A. Yes, sir; that print shows through the paper.

Q. Is that the original record filed in your office purporting to come from Mr. Atwell?

A. Yes, sir.

Q. What is the date of the telegram?

A. 21st of July.

Q. Where is it dated?

A. Laurel Hill, Florida.

Q. Read it?

A. "Laurel Hill, Florida, July 21, 1906, W. S. Harlan, Lockhart, Alabama. Two foreigners here from your camp. Shall I stop them?" Signed "John Atwell," "deputy sheriff."

Q. Tell us what you did with it?

A. When I received the message I carried it to Mr. Harlan's office and they told me he had gone to the mill,
242 so I carried it to the mill and delivered it to Mr. Harlan in person.

Q. What did he say to do?

A. He read it and said to take it to Sandor and answer, hold them.

Q. Then you carried the message to Mr. Sandor, did you?

A. Yes, sir.

Q. Did you receive such a message from Mr. Sandor?

A. Yes, sir.
Q. What did you do with it?
A. I carried it and transmitted it to Laurel Hill.
Q. Addressed to whom?
A. John Atwell.
Q. Please read that?
A. "Lockhart, July 21, John Atwell, Laurel Hill. Hold them; start at once for Laurel Hill." Signed "W. S. Harlan."

Cross Examination.

Q. Did Mr. Harlan have a private secretary in the office?
A. A stenographer, do you mean?
Q. A private secretary?
A. Do you mean a stenographer, or what?
A. [Q.] No, a man that does clerical work?
A. Yes, sir.
Q. Did you transmit messages for him and sign his name frequently?
A. Very seldom.
Q. Sometimes you did?
A. Yes, sir.
A. You framed the message yourself?
A. No, sir.
Q. Who framed the message?
A. He would tell me what to say, and I would answer it.

243 Q. You would frame the language yourself, he would tell you what to say, you did not undertake to say every time what he said?

A. No, sir.
Q. Where was Mr. Sandor, in the same office?
A. Yes, sir.
Q. How much of an office is this?
A. Why, about ten rooms, I suppose.
Q. Which is the nearest to the telegraph office that you keep, Sandor or Mr. Harlan?
A. Mr. Harlan.
Q. How near is Mr. Harlan's office located?
A. In the next room to mine.
Q. Where was Mr. Sandor's office?
A. In the rear of the building.
Q. How many rooms away?
A. Two rooms away.

Q. Don't you go through the bookkeeper's room to go to Mr. Sandor's room?

A. Yes, sir.

Q. Don't you go through an anti-room then?

A. I go through the bookkeeper's office into the hall, and then another room.

Q. Is there not an anti-room there where they keep books, and then the hall?

A. No, sir; only pass through two rooms to get there beside the hall.

Re-Direct Examination.

Q. I believe you stated that you delivered this telegram to Mr. Harlan other than at his office?

A. Yes, sir.

Q. Where?

244? A. At the mill.

Q. On the lumber yards?

A. At the mill, at the saw mill.

Re-Cross Examination.

Q. Did you resign your position or were you discharged?

A. I resigned.

Q. Conditionally?

A. Yes, sir.

Q. About how long ago?

A. I resigned on the 5th of November, to take effect the 5th of December.

Q. Was that resignation to take effect as soon as you could be relieved?

A. Yes, sir; within thirty days at the outside.

Q. What was the object of your resigning?

A. I believed that I would be discharged.

Q. Didn't you resign because your family moved away.

A. Moved to Arkansas.

Q. And didn't you give as the reason of your resigning was because your family had moved to Arkansas?

A. No, sir; I do not recollect if I did.

Q. Do you recollect the exact language that Mr. Harlan used to you at the time you handed him the telegram?

A. From Laurel Hill?

Q. Yes.

A. No, sir; I do not.

Q. What did he say about Mr. Sandor?

A. He only said take the message to Mr. Sandor, and have him answer it, "hold them."

Q. Did he say anything to you to make inquiry from Mr. Sandor as to whether anybody had committed any

245 depredation or anything like that?

A. No, sir.

Q. Didn't he say to have them identified?

A. No, sir.

Q. You are sure of that?

A. Yes, sir.

Re-Direct Examination.

Q. You say you resigned because you thought you would be discharged?

A. Yes, sir.

Q. When did you get your first subpoena to Court?

A. It was late in December, I don't recollect what date.

Q. Soon after that, was it not?

A. Yes, sir.

Q. And it was after that that you resigned?

A. Yes, sir; after I got the subpoena, about two days later, I think.

Thereupon the Government called as a witness one JOHN ATWELL, who having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?

A. John Atwell.

Q. Where do you live?

A. Laurel Hill, Walton County.

Q. Do you occupy any position or office?

246 A. Yes, sir.

Q. What is that?

A. I am deputy sheriff.

Q. Were you such deputy sheriff last July?

A. Yes, sir.

Q. Did you, about some time in July, observe two foreigners or strangers passing through Laurel Hill?

A. I did.

Q. Did you make known that fact to the Jackson Lumber Company?

A. I did.

Q. How?

A. By wire.

Q. Did you telegraph them?

A. Yes, sir.

Q. Did you get any answer from that wire—to whom did you wire, if you remember?

A. I wired Mr. Harlan.

Q. If you would see a copy of that could you refresh your memory, and say whether or not you remember the language of that telegram?

A. No, sir; I do not think I could.

Q. Did you get a reply?

A. I did.

Q. Have you that reply?

A. No, sir.

Q. Did you keep that reply on file it away?

A. No, sir.

Q. Have you lost it?

A. I suppose so.

Q. Have you looked for it?

A. I looked for it when I was at home, but I could not find it.

247 Q. What was the purport of that telegram that you received from Lockhart?

But the counsel for defendants did than and there object to the witness stating the contents of the telegram because it is secondary evidence, and because no sufficient predicate has been laid.

But the Court did then and there overrule such objection, to which ruling of the Court defendants did then and there except.

Q. What was the purport of this telegram that you received from Lockhart?

A. I think it said to hold these two men, stop them.

Q. Was anything said about their coming for them?

A. I do not think there was.

Q. What did you do when you received that telegram?

A. Well, the men had left Laurel Hill and come off down the railroad this way, and I decided I would go and see them and show them the telegram, and ask them to stop until they could be identified as to whether they were the men wanted or not.

Q. You asked them to stop?

A. No, that is what I intended to do.

Q. Well, tell us what you did do?

A. Before I came to where the men was Mr. Gallagher come driving up behind me in a buggy.

Q. Was anybody with him?

A. Yes, sir; another man was with him.

Q. Do you recognize that man here? Did you ever see that man that was with him before?

A. No, sir.

Q. Have you seen him since?

A. No, sir.

Q. You had no conversation with the second party?

248 A. No, sir.

Q. Did you have any conversation with Mr. Gallagher?

A. He came on up and we drove on for some distance and then he left my buggy, and then this man that was with Mr. Gallagher, and my brother, got in my buggy, and I got in the buggy with Mr. Gallagher and we drove until we come to where these men was.

Q. Did you come right up to them or alongside?

A. Come right up to them.

Q. [A.] We were traveling the dirt road and they the railroad, and the road we traveled made a bend and we came up sidewise to them, and when we drove up pretty close to them, Mr. Gallagher says, I don't know them men, they are not the men we are after. Well, I knew the men would know we come there on some business.

Q. How did these men appear at that time?

A. They were walking along.

Q. Did they stop?

A. When I spoke to them.

Q. Was anything out of the ordinary in their appearance—how did they look or seem?

A. They just seemed like men traveling along the road.

Q. Were they excited?

A. I don't think they was, not then.

Q. When did they become excited?

A. If they became excited at all it was when Mr. Gallagher came out where I was talking to them.

Q. What was Mr. Gallagher doing there?

A. Sitting back at the buggy.

Q. Did Mr. Galagher come out to where you were talking to the men?

A. Yes, sir.

Q. How did they seem and appear then?

A. I could ont tell; they seemed to be scared, though I could not say they was.

249 Q. What did Mr. Gallagher do then?

A. He did not do anything then. He come up where I was after he spoke to them; I do not recollect.

Q. What conversation did you have with the men?

A. Let me see, I cannot remember all the conversation that I did have.

Q. Did you ask them where they were from?

A. I did at Laurel Hill that morning; I did not then.

Q. Where did they say they were from?

A. One I could not understand; he first said he was from Stearns Culver, and in a few minutes he said no, he was from Lockhart.

Q. When you overtook them did you tell them then they were wanted back at Lockhart?

A. I told them I thought they was the men wanted at Lockhart, but I was mistaken.

Q. Then what else—did they ask anything about directions?

A. I do ont think they did, but they pointed in the direction of the Falco Mills; I could only understand a few words.

Q. How long were you there with them before these men left for somewhere?

A. I don't know exactly, I suppose, may be—

Q. Did Gallagher come up before they started back?

A. Yes, sir.

Q. What did he do or say?

A. If he said anything I do not remember.

Q. What is the matter with your memory and mind? Are you fittified?

A. No.

Q. Have you forgotten what you testified here last week?

A. No.

Q. I want to hear what you have got to say in answer to my question: Did Gallagher come up to these men

250 before they started in any directions with you?

A. Yes, sir.

Q. Now, what did he do?

A. When he came up there the men turned back on the railroad.

Q. And Gallagher turned the same way, didn't he?

A. No, he did not go with them, but when he turned back one looked like he had a pistol in his pocket, and Mr. Gallagher felt down towards his pocket with his hand and the man hit at him, seems to me, seems to me he hit his hat, but very little, and Mr. Gallagher kicked him.

Q. How many times?

A. Twice.

Q. Did he kick him very severely?

A. No, not hard.

Q. What was he kicking him for?

A. I do not know.

Q. Because he could not find any pistol?

A. I do not know.

Q. He did not find any pistol?

A. No, sir; he did not find any.

Q. What did Gallagher have in his hand?

A. He had a pistol.

Q. Which—in his hand?

A. No, he gave me the pistol before that.

Q. You had the pistol in your hand?

A. Yes, sir.

Q. What became of the men?

A. When they started back they started back to walk the railroad and Mr. Gallagher says I am going home, and he turned his back to the buggy, and I walked on down the railroad with the men, and he drove back around the
251 road and come back to where the dirt road came
there from the railroad again, and stopped with the buggy, and walked back with the men down to there, and I tried to explain, and done the best I could, that they were not the men wanted back up there, and showed them to come on, but they did not do it, so they went on back, and when I got on back to the buggy I told them if they were going back they could ride with Mr. Gallagher I reckoned. So I went to the buggy and shoved the pistol in the buggy, and I went on back the railroad.

Q. You left Mr. Gallagher with the men?

A. Yes, sir.

Q. What did you say to the men about going back to Lockhart, if they owed anything?

A. I think I told them if they owed anything it was better to go back and pay it.

Q. And then you turned them over to Mr. Gallagher and they got in the buggy, didn't you?

Counsel for Defendants:
This witness should be cautioned by Government's counsel. We will ask the Court to have the witness instructed not to make any statement that will incriminate himself.

By the Court:
You understand that you are not bound to answer any question that you might think may incriminate yourself.

Q. That same admonition was given you before and you understood it,
A. Yes, sir.
Q. Now, these men you say, went back with Gallagher in the buggy?
A. They started.
Q. Did they stop in your presence anywhere after that?
A. They stopped after that; they were not in the buggy when I seen them last.
Q. You came up where they was?
252 A. Yes, sir; they went on and left me, and I got in my buggy and started on; I next seed them, one of the foreigners and the man with Mr. Gallagher was going back the railroad looking for a purse they said this foreigner had lost.
Q. Where was the other one?
A. Laying under the shade of a big tree, apparently asleep.
Q. And who went back to hunt the purse?
A. I could not tell you the name of the man.
Q. It was the stranger who was with Mr. Gallagher?
A. Yes, sir.
Q. Now, did you see a man by the name of David Clary that day?
A. Yes, sir; I think I did.
Q. Did you ask Mr. Clary if he had seen these men or some men that morning going down the road or past his place?
A. No, sir.
Q. This was the same day that you came back with the two men?
A. Yes, sir.
Q. How far did you accompany Gallagher and the stranger with the two men?

A. I did not go any distance with them when they got in the buggy.

Q. Were you paid anything by Mr. Gallagher?

A. I was after that.

Q. Where?

A. I was paid at the camp?

Q. How much?

A. Five dollars.

Q. For this service?

A. I do not know whether you would call it for this service or not.

Q. You did not render any other service?

A. None except going to the camp and promising to come here as a witness.

253 Q. You received five dollars?

A. Yes, sir.

Q. You testified a week ago here, didn't you?

A. Yes, sir.

Q. Do you remember what you said in reference to the five dollars?

A. Yes, sir.

Q. Did you not say that this five dollars was for that service?

A. That was what it was for.

Q. That service?

A. Yes, sir.

Q. Had you had any communications from the Jackson Lumber Company or Mr. Harlan prior to or subsequent to this event?

A. I think I had two.

Q. Two messages before?

A. No, one message before.

Q. Was that in reference to the other men or strangers—did you have any conversation with Mr. Gallagher about any other men, foreigners from there, and what to do with them?

A. I think I did.

Q. Is it not a fact that it was generally understood that you had instructions from Mr. Gallagher to stop any foreigners from passing through there or let them know when you did see them?

A. No, sir.

Q. Only these two other cases?

A. Yes, sir.

Q. Had you seen some other men passing before you had this comunication with Gallagher which you referred to?

A. Yes, sir.

Q. What kind of men were they?

A. They seemed to be all foreigners.

Q. Now, you say that these two men, the two men with Gallagher, were in the buggy?

254 A. Yes, sir.

Q. Do you know how many horses were pulling it?

A. One.

Q. Were there dogs with that buggy?

A. Yes, sir.

Q. How many?

A. Two.

Q. What kind of looking dogs were they?

A. They looked like bulldogs to me. Only little bity dogs—small.

Q. That was in what county?

A. Walton county.

Q. Where did you find those two men—on the road?

A. Yes, sir.

Cross Examination.

Q. You have been deputy sheriff for some time, have you?

A. Yes, sir.

Q. You say you never had instructions from anybody to arrest any foreigners except these two?

A. That is all.

Q. There was no general understanding between any of these defendants and yourself that you were to stop men that were going away from there that were employes of the Jackson Lumber Company?

A. None, except those two times.

Q. Were you, or not, in the habit of inspecting these men to see whether they had pass ports to leave there or not?

A. No, sir.

Q. How long have you been deputy sheriff there?

A. Something over two years.

Q. You were deputy sheriff for the western portion of Walton County there?

A. Yes, sir.

255 Q. Do you know of any other deputy sheriff in the western portion of the county other than yourself?

A. No, sir.

Q. You are the only one that you know of?

A. Yes, sir.

Q. This occurred in the western portion of Walton County did it not?

A. Yes, sir.

Q. And Laurel Hill is in Florida?

A. Yes, sir.

Q. Florala is in Alabama, near the line of Florida?

A. Yes, sir.

Q. Right beside the western portion of Walton County?

A. Yes, sir.

Q. I will ask you to describe as minutely as you can each one of these foreigners; tell me what kind of a looking man; take one and describe him minutely, not in a general way, as you can give it.

A. I never was with them but a few minutes. One was a large, heavy built man with a red beard, and the other was a slimmer, slick face fellow. I describe the men any better.

Q. Was the slim man the young man?

A. Yes, sir; he seemed to be a young man.

Q. He never had any beard?

A. No, sir.

Q. Was he a fair man or a dark man?

A. Fair skinned man; tolerably fair skinned man.

Q. Blue eyes or black eyes?

A. I could not tell you that.

Q. Was the red bearded man a blue eyed man or a black eyed man?

A. I could not say.

Q. About what was his heighth?

A. The large man I suppose—I could not tell about his heighth—I never seen anybody measured.

256 Q. You can give me some idea?

A. He was a little above the medium height of men.

Q. And the other man?

A. About medium heighth, and slender.

Q. Had you received any communication by telephone or otherwise that these men they were looking for, that these men had stolen some things?

A. Yes, sir.

Q. What was it?

A. Mr. Porter, the man whom I supposed to be the bookkeeper at the camp, came to my house, and there was a man in the buggy with him that I didn't know, and told me that these parties had stolen a watch and pistol, and he mentioned other things, and clothes, and if I see anything of them to give a description as near as I could, and if I seed anything of them to notify him at the log camp.

Q. Was that what caused you to send the telegram?

A. Yes, sir.

Q. At the time you saw these men, and the time of these acts, you testified to, that was the date the telegram was sent, or the following day?

A. Both the same day.

Q. Did you state what that was or that you did not remember?

A. No, sir; I do not remember the date.

Re-Direct Examination.

Q. I believe you said you were deputy sheriff?

A. Yes, sir.

Q. And when Mr. Gallagher came up to the men he said they were not the men wanted for stealing?

A. Yes, sir.

257 Q. But he took them back, did he?

A. They went back part of the way with him.

Q. Now, did Mr. Gallagher exhibit to you any warrant for the arrest of these men?

A. No, sir.

Q. Did you take them to any officer or justice of the peace or anybody that had jurisdiction to hold such men?

A. I did not carry them anywhere.

Q. Did you ask or demand of Mr. Gallagher a warrant for the arrest of these men?

A. No, sir.

Q. Now, you say one of the men seemed pretty frightened—did he say or did not he intimate to you that he was afraid or scared to go back?

A. No, sir.

Q. Did you ever make a written statement to anybody about this circumstance?

A. I did.

Q. Do you know to whom?

A. To a lady, she told me her name was Mrs. Quackenbos.

Q. Did you in that statement tell her that one of the men said he was scared to go back?

A. I said they looked scared.

Q. And did he look scared after Gallagher came up?

A. He did after they had that spat.

Q. After Gallagher had kicked him twice?

A. Yes, sir.

Q. Now, these other messages you are talking about from Mr. Gallagher was anything in reference to anybody stealing or had stolen then?

A. This was before I got that message.

Q. Was that man apprehended by you?

258 A. No, sir.

Q. Did you ever tell them that you have to have warrants to arrest these people?

A. No, sir.

Q. Now, you said you were the only deputy at Laurel Hill —do you not know that there are deputies at Florala, deputy sheriffs, men that arrest people?

A. I suppose there is.

Q. Do you know one Moneiky?

A. Yes, sir.

Q. What is his office and business?

A. I think he is a deputy sheriff.

Q. How far is Florala from Laurel Hill?

A. It is ten miles.

Q. And Florala is on the line?

A. Above that.

Q. You have been to Lockhart, have you?

A. One time.

Q. How far is it from your place Laurel Hill to Lockhart?

A. It is about the same distance as to Florala, about ten miles.

Q. Do you go to Florala in going there or do you go in some other direction?

A. You can go in another direction, and not go to Florala.

Q. There is a railroad between the points Laurel Hill and Lockhart?

A. Yes, sir; by the way of Florala.

Re-Cross Examination.

Q. Did you testify before the grand jury?

A. Yes, sir.

Q. You testified substantially to the same facts testified here now, did you?

A. Yes, sir.

259 Re-Direct Examination.

Q. Were you admonished before the grand jury?
A. I do not remember whether I was or not.
Q. Don't you remember his reading a paper to you?
A. Yes, sir.

Thereupon the Government called as a witness one H. M. STOKES, who, having been duly sworn, testified as follows:

Direct Examination.

Q. Where do you live?
A. Laurel Hill.
Q. Where did you live last July and August?
A. Laurel Hill.
Q. What is your business or occupation?
A. Mercantile business.
Q. Do you know John Atwell?
A. Yes, sir.
Q. Do you know what official position he holds?
A. He has been acting as deputy sheriff.
Q. Do you know Julius Rhodes?
A. Yes, sir.
Q. He lives in the same place?
A. Laurel Hill.
Q. Does Atwell live there?
A. Yes, sir.

260 Q. Do you remember about some time in July of seeing any foreigners, I believe you possibly expressed it "outlandish people," employees, passing through Laurel Hill?

A. Yes, sir; at different times I have seen several passing through.

Q. Do you know the dates or can you fix the date that Mr. Atwell went in pursuit of two men?

A. I never seen him in pursuit.

Q. Well, the day he left Laurel Hill? Did you have any conversation with him that day?

A. No, sir.

Q. After that?

A. I heard him speak about it—I did not speak to him, nor him to me.

Q. Who was he speaking to?

A. Jeb Howell and him were talking it over.

Q. Was he talking about the two men he went to get?

A. Yes, sir.

Q. Do you remember about that, don't you, that he went off?

A. On that occasion you mean, the time he brought the two men back?

Q. Yes.

A. It was about the 21st of July.

Q. State to the Court and jury just what you saw, just what time of day, who it was, and how these men were traveling which you saw? Do you know Gallagher?

A. Yes, sir.

Q. Did you see Gallagher and anybody that morning passing through Laurel Hill inquiring for anybody?

A. Yes, sir; they stopped at my door and asked me if I knew here Mr. Atwell was?

Q. Who asked you?

A. Gallagher.

261 Q. Who else?

A. A stranger was with him.

Q. Did they ask for Mr. Atwell?

A. Yes, sir.

Q. Did you see him again that same day?

A. Yes, sir; in the afternoon.

Q. State what you saw?

A. They were coming back from towards Crestview going back towards camp, and had two foreigners in the buggy.

Q. How were they traveling?

A. One was sitting in the seat between them—it was a kind of piano buggy—a single buggy, and so was sitting in the seat between them, and the other in the back part of the buggy.

Q. How was the one fixed in the back part of the buggy?

A. It looked as if he was tied, with a leather strap.

Q. Did they stop in Laurel Hill?

A. No, sir.

Q. Which way did they go when you saw them?

A. On back towards camp.

Q. What county?

A. Laurel Hill.

Q. Was anything more that attracted your attention?

A. When they passed through there that morning they had two English bull dogs; I called them tarriers; the dogs were treading along behind the buggy when they came back.

Q. Have you seen them any other time, these same parties, inquire for Mr. Atwell.

A. Once before that, once before—previous—

Q. Who was that?

A. Mr. Gallagher, Dr. Grace and another one.

262 Q. You saw them—did you speak to them that day?

A. They stopped and asked me some question about Mr. Atwell.

Q. Did you see them any more that day?

A. No, sir.

Cross Examination.

Q. How close were you to these two men in the buggy on the 21st?

A. Thirty yards, I suppose.

Q. Just driving along the road?

A. They come sort of back of the store—the back way.

Q. Did they stop at all?

A. No, sir; they was on a trot.

Q. You do not know whether the strap was thrown across the man or tied, do you?

A. No, sir; I do not know; it looked as if he was strapped behind the buggy.

Q. A leather strap?

A. Yes, sir; looked like.

Q. You did not see the men sufficiently close to give me anything like a description of them?

A. No, sir; I could not identify them.

Q. You cannot describe them at all?

A. No, sir.

Thereupon the Government called at a witness one JULIUS RHODES, who, having been duly sworn, testified as follows:

Direct Examination.

Q. Where do you live?

263 A. Laurel Hill.

Q. What county?

A. Walton County.

Q. State?

A. Florida.

Q. Did you live there last July?
A. Yes, sir.
Q. Do you know Mr. Gallagher?
A. Yes, sir.
Q. Do you know Dr. Grace?
A. Yes, sir.
Q. Do you know Mr. Sandor?
A. I seen him.
Q. Can you point him out here?
A. Yes, sir.
Q. Did you see those men in July passing through Laurel Hill?
A. Yes, sir.
Q. Did you have any conversation with them?
A. No, sir.
Q. How were they traveling?
A. They were traveling in a buggy.
Q. Three men in a buggy?
A. Yes, sir.
Q. Did they have anything with them?
A. They had a couple of dogs with them.
Q. What kind of dogs?
A. They must have been blood hounds.
Q. Any time after that subsequent to this time did you see Mr. Gallagher again?
A. Yes, sir.
Q. Did he have any conversation with you, speak to you?
264 A. He asked where Mr. Atwell was.
Q. What Atwell?
A. John Atwell.
Q. What was he then?
A. He was deputy sheriff.
Q. Was anybody with him at that time?
A. I do not know the names of the men.
Q. Was Atwell with you at the time?
A. No, sir; not when he asked the question.
Q. Where was he then?
A. He had gone down the road, down the railroad some where.
Q. Do you know for what he had gone?
A. To catch two men.
Q. Was Atwell working for you at that time?
A. Yes, sir.
Q. What was he doing?

A. Building a house.
Q. Was he working with you on this house?
A. Yes, sir.
Q. Well, he stated to you when he left where he was going?
A. Yes, sir.

Counsel for defendants did then and there move to strike out the statement of the witness.

Q. You say he left the house you were working on?
A. Yes, sir.
Q. What time in the morning?
A. I judge it to be about 9 o'clock.

The Court did then and there grant the motion to strike out the statement of the witness that Atwell said he was going after two men.

265 Q. You say Atwell left your service that morning?
A. Yes, sir.
Q. How did he leave, was anybody with him?
A. There was no one with him when he left the house.
Q. Did he take anything with him?
A. I do not know, I did not see him when he left town.
Q. Did you see him any more that day?
A. I do not believe that I did.
Q. How long after Atwell disappeared or quit your work before you saw Gallagher and this stranger?
A. May be an hour; not far over an hour.
Q. Now, when he asked you where Atwell was did you tell him?
A. I told him he had gone down the road somewhere.
Q. Did you tell him for what?
A. Yes, sir.
Q. What was it?
A. To look for some men.
Q. Then what did Gallagher say?
A. He never said anything, but went on that way.
Q. Did he drive right on after?
A. Yes, sir.
A. Did you see him any more that day?
A. Yes, sir.

Q. Now, state in your own way just where you saw him, and what he was doing?

A. I saw him pass back through coming on back to Laurel Hill with that strange man with him, and a couple of more men, I did not know either one.

Q. A couple of more men you did not know?

A. Yes, sir.

Q. Tell us how the couple of men you did not know were riding?

266 A. They were in the buggy with him, one on the back of the buggy and one in front.

Q. How was the one on the back of the buggy—was there anything that attracted your attention?

A. He was sitting down in the back of the buggy; he looked to have been tied, but I could not say he was tied.

Q. Did you see anything around him?

A. A leather strap was over the back of the buggy, but I do not know whether it was tied around him or not.

Q. Where were you?

A. I was standing on my barber shop gallery, and they were passing the crossing of the street, may be seventy-five or a hundred feet from me.

Q. Did they stop in Laurel Hill?

A. No, sir.

Q. Which way did they go?

A. They went on towards the camp.

Q. Where?

A. Towards Lockhart camp.

Q. You do not know whether Atwell turned up any more that day?

A. I never saw him any more that day.

Q. But he got your permission to go that morning?

A. Yes, sir.

Q. Ever hear Gallagher in a conversation with Atwell give any instructions to Atwell about foreigners passing through there?

A. No, sir.

Q. You saw Gallagher, Grace and another man, this man Sandor, pass through there some time before?

A. Yes, sir.

Q. One horse or two horse buggy?

A. One horse.

267 Q. Did they have anything with them?

A. Some dogs with them.

Q. Did they have any guns?

A. I did not see any.

Q. Did they have anything to say to you as to what they were doing or where they were going?

A. No, sir.

Q. In your presence or in the presence of anybody else?

A. Not that I know of, I don't think so.

Q. You did not hear them talking to anybody else that morning?

A. No, sir.

Q. Did you see them any more that day?

A. No, sir.

Q. Did you see them returning?

A. No, sir.

(No cross.)

Thereupon the Government called as a witness one J. B. BARLOW, who, having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?

A. J. B. Barlow.

Q. Where do you live, at the present time?

A. Laurel Hill.

Q. Did you work this year for the Jackson Lumber Company?

A. Yes, sir.

Q. Where at?

268 A. I worked on the engine from the mill to the camp.

Q. Where is the mill situated?

A. At Lockhart.

Q. And to what camp?

A. Jackson Lumber Company camp.

Q. The turpentine camp or the logging camp?

A. The logging camp.

Q. You worked on the engine?

A. Yes, sir.

Q. What was your job?

A. Firing.

Q. Were you such fireman on such engine in the month of July this year?

A. Yes, sir.

Q. Were you frequently at, in and about these camps?

A. Yes, sir; go out every morning and come back at night, and two or three trips a day.

Q. What was your locomotive engaged in while you were there?

A. Around the engine?

Q. Hauling logs?

A. Yes, sir.

Q. Do you know where the men stayed and ate and slept?

A. They eat and slept in the cars.

Q. You were there in the month of July, do you know of any men, foreigners, that were working there, having been brought back?

A. Yes, sir; I seen some one morning, a man that quit, and big Harry was bringing him back said he had stolen some clothes.

Q. Was anybody with him?

A. No, sir; just him and these two men.

Q. Any other time?

A. He brought them down to the car, and they had a seat on the bench there and sat there a while—he went
269 in the car where Mr. Gallagher was.

Q. What transpired in there?

A. I did not go in there, and after they come out, Big Harry, I asked him what was done with them, and Big Harry said turn them loose, provided they would work six months on the railroad.

Q. Did you ever have any conversation with Mr. Gallagher about any of the men escaping?

A. No, sir.

Q. Do you know anything about a rule or regulation of the company about men going on your engine back and forth?

A. Yes, sir; we have orders not to carry anybody on the train from the camps to the mill without a pass.

Q. In the month of July?

A. Yes, sir.

Q. Not to carry anybody from the camps to the mill without a pass?

A. Yes, sir.

Q. Was that any time of day or night?

A. Yes, sir.

Q. Did you have any conversation with Mr. Gallagher—

did you know of their bringing back others—did you hear any of the bosses talking about it?

A. I heard them talking about bringing others back.

Q. Who did you hear talking about it?

A. Just talking among the crew hands there.

Q. That is Big Harry and any of those around Gallagher?

A. No, sir; I do not think I heard Big Harry say anything about it.

Q. Did you hear Gallagher or any of the men say what they were bringing them back for?

A. Don't seem to me like I did.

270 Q. How long has it been since you forgot it? Did you testify before the grand jury; did you testify before the grand jury last week or the week before?

A. Yes, sir.

Q. Do you remember whether you said anything about the conversation with Gallagher as to what Gallagher said to you about keeping the men there or not letting them go from the camp to the office of the company in Lockhart?

A. Seems to me like I remember hearing some of them talking, but I don't remember who it was speaking.

Q. Don't you know whether Gallagher was present or not?

A. No, sir.

Q. Was it not some of the bosses giving you reasons why these instructions were given; can you refresh your memory about these things? Have you been talking to anybody about this case since you were here week before last?

A. No, sir.

Q. Have you been talking to any of the defendants?

A. No, sir.

Q. Well, what is the matter with your recollection? Do you know—just tell us now whether or not you heard these bosses, any of these men who were bosses, around there, foremen of gangs, these men whom you recognized in general conversation at any particular time, but that it was generally understood from them that these men were not allowed to leave there because they owed for transportation.

But the defendants' counsel did then and there object to the form the question, but said Judge did then and there overrule said objection, to which ruling of the Court defendants' counsel did then and there except.

271 **By the Court:**

I think that this witness has developed a condition that authorizes the question.

A. I think that was what it was understood—to work out the transportation.

But the defendants' counsel did then and there move to strike the testimony of said witness.

Q. What was that conversation and talk you heard around the camps among the bosses?

Defendants' Counsel:

Wait until we get a ruling.

By the Court:

I will give you an exception on that?

The defendants' counsel did then and there except to such ruling of the Court.

Q. Answer the question? Did you have the same trouble when you testified before last week that you have now in recollecting these things, and in telling what you know about it?

A. No.

Q. Have you been intoxicated in the last twenty-four hours?

A. I never get that way.

Q. Why were those instructions given not to allow men to go to and from on the train?

A. To keep them from going to the mill and getting away, I reckon.

Q. I want to pin you down. Do you remember having a conversation with—do you know Caldwell?

A. Yes, sir.

Q. Do you remember having a conversation with Mr. Reese here, this lawyer, and Mr. Caldwell last Tuesday down here, not far from the post office on the curb stone, in which you made a statement of what you knew about what Gallagher said about the men not being allowed to go and come, and why he kept them there? Did you make that statement then?

272 A. I think I did say something about it.

Q. Well, now, did not you tell Mr. Reese in the presence of Mr. Caldwell that you had heard Mr. Gallagher say that the reason they gave these orders, and why they were keeping there men there, was that they wanted them to work out their transportation?

But the defendants' counsel did then and there object to the question as leading, and upon the further ground that the Government cannot lay a predicate to impeach its own witness.

But the Court did then and there overrule said objection, to which ruling of the Court defendants did then and there except.

Q. Tell us if you did not tell those gentlemen down there that? Now, let us have the truth, that you know one way or the other?

A. I heard all of them talking, bunches talking, just standing and talking with them, that they were going to keep them there to work out transportation.

Q. Didn't you tell Mr. Reese in the presence of Mr. Caldwell that you had heard Mr. Gallagher say so at the same time in this conversation—answer it yes or no.

A. I think I did.

Cross-Examination.

Q. You were talking to Mr. Reese and a gentleman at that time?

A. Yes, sir.

Q. You were not under oath then?

A. No, sir.

Q. You are under oath now?

A. I suppose so.

Q. Can you say under oath that you ever heard Mr. Gallagher say anything about it?

273 A. I heard them talk about fellows getting away.

Q. But did you hear him say, or any of the rest of the defendants say, anything about their keeping them there to work out their transportation?

A. Yes, sir; I have heard them say so, wanted to keep them there to work out their transporation.

Q. Who did you hear say that?

A. Bunches standing talking.

Q. I am not talking about bunches of men or laborers—bunches of these men here?

A. Yes, sir.

Q. The bosses were there—who was doing the talking?

A. All them was talking.

Q. When did you hear them talking?

A. I could not say what time of the month it was.

Q. You do not know when it was?

A. It was in July.

Q. Just now you did not remember that you had heard any of these defendants say anything about it, how is it now that you have been able to remember that? What is helping you to remember that?

A. People gets to thinking over things and it will come back to them at times.

Q. I am not talking about what people did—I asked you how you remembered that?

A. It just came back to my mind.

Q. Now, then, does it come back to your mind that you said this or that you heard them make this remark?

A. It come back to my mind that I heard them make the remark.

Q. Now, it comes back to your mind that you heard them make the remark, does it come back just what those remarks were? Did the remarks themselves come back to
274 your mind?

A. I do not know what you mean?

Q. Did the statement they made come back to your mind?

A. Yes, sir; the statement come back to my mind.

Q. What was it?

A. That they wanted to keep them there until they worked out their transportation.

Q. Now, the time they made this remark, does it come back to your mind?

A. No, sir.

Q. Did the place where they made the remark come back to your mind?

A. Yes, sir.

Q. Where was it?

A. At the camp cars.

A. Night or day?

A. In the day, I was not there at night.

Q. What time of day?

A. About six o'clock—after five; five or six in the evening.

Q. Who was there?

A. Lots of them there, I could not tell you who was there?

A. Can you name anybody who was there?

A. Yes, sir.

Q. Who?

A. Mr. Gallagher and Big Harry and lots of them there, about one hundred and fifty men.

Q. They said they wanted them to stay there and work out their transportation?

A. Wanted all to work out transportation.

Q. Was there any prohibition against their riding on the engine and cars of the company at night?

A. Not after six o'clock; they could go to the mill.

275 Q. But during the day time they were not expected to leave on those cars?

A. They wanted them to stay there and work.

Q. I am not asking you what they wanted done. During the day time, when the cars were engaged in work, these men were not expected to ride on those cars, is that right?

A. No, not expected to ride on those cars in the day time; all who wanted to go in at night could go.

Q. Anybody could go in any direction they wanted to go at night?

A. If they wanted to go they could go.

Q. If they wanted to go to the mill at Lockhart or Florala they could go?

A. I reckon they could; the train did not go any further than the mill.

Q. Is there any communication from there to Florala?

A. There is a railroad that runs from the mill on out to Florala, but you could not go without paying?

Q. It was not run by the Jackson Lumber Company?

A. No, sir.

Q. But they could go to Lockhart and go any course they wanted to go on these trains?

A. They could go to the mill.

Q. They could go anywhere the Jackson Lumber Company cars ran—they could go at night, is that right?

A. I reckon they could—I did not see anybody try to keep them after six o'clock?

Q. You heard no instructions to the contrary, did you?

A. Not after six o'clock.

Q. Did not you state on your former examination that you were a fireman, and that during the work hours you were instructed that men could not go on the cars, but that after that they could go anywhere they wanted to on
276 the land?

A. After six o'colck they could go to the mill where most of them lived, but went in and out on the train.

Q. Wherever that car went they could go?

A. They could go to the mill.

Q. Where did the car run?

A. To the mill?

Q. Did it run anywhere else?

A. No.

Re-Direct Examination.

Q. Did you see Mr. Gallagher yesterday?

A. Yes, sir.

Q. Did you talk to him?

A. No, sir.

Q. And you didn't have any conversation?

A. No, sir.

Q. Did you see Big Harry?

A. I saw him in the hall.

Q. What time yesterday?

A. About 12 or 1 o'clock.

Q. Did you have any conversation with him?

A. No, sir.

Q. Do you know Harry Bellinger?

A. Yes, sir.

Q. Did you see him yesterday?

A. Yes, sir.

Q. Did you have any conversation with him?

A. Yes, sir; in the hall, a little.

Q. Was it about this case?

277 A. No, he just stopped and sort of laughed, and spoke to me.

Q. What was he laughing at?

A. I do not know.

Q. Did he give you a big Irish smile?

A. I do not know whether you would call it a big Irish smile or not.

Q. You do not know what he was laughing about?

A. No, sir.

Q. Was he here at Court when you were here week before last?
A. I saw him here.
Q. You did not see Gallagher late yesterday afternoon?
A. No, sir.

Thereupon JOHN ATWELL was recalled by the defendants, and testified as follows:

Cross Examination.

Q. Do you know how those two men were dressed that you spoke of this morning?
A. Yes, sir; right smart about how they were dressed.
Q. How?
A. They were dressed in ordinary working clothes; one had on a coat, and one had his coat on his arm.
Q. Do you know whether they wore leather belts or not?
A. The one that did not have his coat on then, the young man, he had a belt, the other one if he had on any belt I never noticed it.

278 Re-Direct Examination.

Q. Did they have anything in their hands other than that described?
A. I think one had a small bundle in his hand.
Q. You are certain of that?
A. My recollection is he had a small bundle.
Q. Which one?
A. I think it was the large one.
Q. The one that had the belt on?
A. No, sir.

Thereupon the Government called as a witness one JESSIE C. KEMP, who having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?
A. Jessie C. Kemp.
Q. Where did you live last July?
A. Two and a half miles above Laurel Hill.

Q. What county?

A. Right on the line of Walton County, State line.

Q. In Walton County? What is your occupation or what was it last July?

A. In July I was laying around and hauling watermelons and cabbage.

Q. You are a farmer?

A. Yes, sir.

279 Q. Where did you find market for your watermelons chiefly?

A. I sold mostly at Lockhart and at the log camp.

Q. Now those are camps of the Jackson Lumber Company?

A. Yes, sir.

Q. Do you remember having carried a load of melons up to that camp some time in July? Do you remember the date?

A. I carried about two loads a week generally all through July and may be the first of August.

Q. Now, on one occasion, Mr. Kemp, on one of your trips with watermelons, state if anything unusual or extraordinary occurred that attracted your attention?

A. One time when I was up there this man, Big Harry, attracted my attention.

Q. Do you recognize Big Harry here?

A. Yes, sir; I see him sitting over there now. My attention was attracted to him going towards the shanty with a strap in his hand, accompanied by Mr. Archie Bellinger, my recollection is.

Q. Do you know him now?

A. Yes, sir; I believe that is him sitting back yonder, and I went on some little bit, went to the wagon a bit, and handed out maybe some melons, and presently I saw somebody go from towards the barn towards the shanty with a bundle of rope in their hand in a run, and I knew not who they were. I was off at my wagon a good piece off, and I decided I would go over that way, but in the meantime I saw Mr. Gallagher get away in a hurry.

Q. How was he traveling?

A. He was going on his feet.

Q. At what gate?

A. Went in a trot, going pretty pert, and I decided something was wrong, and that I would go over there and see what I could see, so I walked over there.

280 Q. Over where?

A. To the shanty, one hundred and twenty-five yards away.

Q. Now, was there no people collecting there, any others?

A. Yes, sir; there was six or seven around and about there, negroes and one thing and another. I never went in; I walked up to the door and stepped up on the steps, and Harry was holding up a fellow with the back of his head to the door, and he had a rope around his neck, telling him to say his prayers, and I stepped back down on the ground off of the steps, and presently I heard Mr. Gallagher speak, by his voice I knew him; he said, say what the man will do in return for those things, and some fellow who seemed to be talking for this man—

Q. An interpreter?

A. Yes, sir; seemed to be talking for him—he says presently, he will send back home and get a couple of hundred dollars in return for those things, some clothes and some money that they said he had taken in return; I did not see the things.

Q. Did you see the man deliver up anything?

A. No, sir.

Q. Neither clothes nor money?

A. No, sir; I just walked up and looked at him, and see what was up, and stepped back on the ground.

Q. And that he would make a faithful hand?

A. Yes, sir.

Cross Examination.

Q. Have you any way of fixing the date that this occurred?

A. No, sir; I have not, I suppose it to be somewhere near the 15th of July—I am guessing at that the best I can.

Q. When you first saw the man he was on his back?

281 A. Yes, sir.

Q. And Harry had hold of him?

A. He had his arms crossed him this way, and holding him over on his back this way, and the rope was around his neck.

Q. Did anybody else have hold of him besides Harry?

A. No, sir.

Q. Was anybody else there that you saw?

A. Yes, sir; several thereabouts, but I did not notice the parties.

Q. And when Mr. Gallagher came, and the man said he would give up the things, or had given them up, what did he say?

A. Mr. Gallagher went up ahead of me. I do not know what passed before I got there, he says, see what he will do in return for those things, and the reply was, this man seemed to be talking for this Hungarian, I suppose; he said he would send back home and get two hundred dollars, and pay, and make a faithful hand, was the reply of the man that seemed to be talking for him.

Q. Did you know the man, had you seen the man before, that was interpreting for him?

A. No, sir; I do not know that I did.

Q. You do not know that you would recognize him or not?

A. No, sir.

Q. You have not seen him in the hall?

A. No, sir; if he is there I do not know it.

Q. Did you learn in that conversation what was missing?

A. A couple of watches and a certain amount of money, I cannot remember the amount of money; I remember about them saying a couple of watches.

Q. Do you know who was talking about the watches?

A. No, sir; not distinctly.

Q. Did you learn from that conversation as to whether these things had been stolen or supposed to have been stolen from anything you heard at that time?

282 A. Whether stolen or not?

Q. Yes.

A. It seemed from the sound of everything that it was stolen things; I do not know, but it seemed to be this, the sound of it. Nobody did not say they were stolen or not stolen, as I remember.

Q. That was the impression made on your mind from what you did hear?

A. Yes, sir.

Q. Did you see any one at all yourself while you were there?

A. No, sir.

Q. Did you see any watches?

A. No, sir.

Q. Did you hear the interpreter say or not to this effect that is my money?

A. I heard him say he had given up the watches and the money; I heard that, but I did not hear nothing in regard—

By Government's Counsel:

Did you hear it then and there, about his having given up—

A. Right in there.

By Defendants' Counsel:

He said he had given up the money and watches?

A. Yes, sir.

Q. You did not notice any purse or money?

A. No, sir.

Q. You did not notice anybody with a watch in their hands?

A. No, sir.

Q. Did you see a good many of the laborers standing around there?

A. Mostly what was there was laborers, I suppose.

Re-Direct Examination.

Q. You say when you saw Gallagher he had some ropes going in that way?

283 A. No, sir; it was another man going towards the barn, he was ahead of Mr. Gallagher.

Q. Did Mr. Gallagher have anything in his hand?

A. I do not remember.

Thereupon the Government called as a witness one J. T. WIGGINS, who having been duly sworn, testified as follows:

Direct Examination.

Q. What is your profession or business?

A. Attorney.

Q. Where at?

A. Florala, Alabama.

Q. Did you live there last July?

A. Yes, sir.

Q. Do you know Mr. Gallagher when you see him?

A. Yes, sir.

Q. Do you know Dr. Grace?

A. Yes, sir.

Q. Do you know Mr. Sandor?

A. Yes, I know a man introduced to me as Mr. Sandor.

Q. This man sitting there?

A. Yes, sir.

Q. Did you see these three parties in a buggy some time in July, fix the date if you can, or as near as you can, in Florala with a foreigner?

284 A. I saw them there some time in July; I do not remember exactly the date.

Q. State where you saw them, and what you saw them doing, and who was with them?

A. It was one evening, I went around to the store there, close to Sheppard's saloon, and they drove up there, Mr. Gallagher and Dr. Grace, and Mr. Sandor sitting in front of the buggy, and they had a man in the rear part of the buggy with his feet hanging out.

Q. What did they do at that saloon?

A. They got out, probably two of them got out, a third might have got out, but I know two got out, and went in the saloon for something.

Q. Did you see whether they were smoking when they came back out?

A. I won't be sure about that.

Q. You say that was late in the evening?

A. Yes, sir; it was in the evening.

Q. Did you see the parties leave there?

A. Yes, sir.

Q. What direction did they go?

A. Towards Lockhart.

Q. Did they stop anywhere else in that town that you know of?

A. Not that I saw.

Q. You saw them when they drove up?

A. Yes, sir.

Q. And when they left there?

A. Yes, sir.

Q. And they left on the road which leads to Lockhart?

A. Yes, sir.

Q. You have seen Trudich Mihaly when he testified
through the interpreter; do you think that was the
285 man that you saw sitting in the back part of the
buggy?

A. That looks something like him, he had on a derby, but that resembles him to some extent, except his face was a good deal redder than it is now.

Q. That was in the summer time, was it?

A. Yes, sir.

Q. You think he had on a derby hat?

A. Yes, sir.

Q. Were there any dogs with that buggy?

A. Yes, sir.

Q. How many?

A. Two black ones on the ground, and one pieded one in the buggy.

Q. What sort of dogs were the black ones?

A. Hounds.

Q. Did you notice anything on the seat of the buggy when they got out?

A. I saw a revolver on the seat.

Q. Do you know William Albert?

A. Yes, sir.

Q. Is that the man you know as William Albert? (Albert having been called into Court.)

A. Yes, sir.

Q. Where did you see him before?

A. I have seen him at Florala several times.

Q. Do you know whether he was in jail some time in July?

A. I do not know whether he was in jail or not; I seen him brought from around towards the jail.

Q. To Court?

A. Yes, sir.

Q. Whose Court?

A. Judge Johnson's, I think.

286 Q. Who was the deputy sheriff that executed processes there?

A. C. H. Moneiky.

Q. Did you represent this man Albert in court?

A. Not that I recollect of.

Q. Were you in Court when he was brought in?

A. I think I was called in there to witness a paper or something.

Q. Witness a paper?

A. That is my recollection.

Q. Who was present?

A. I do not remember anybody except myself and may be Mr. Moneiky and Judge Johnson.

Q. Do you know whether Mr. Gallagher was there that day?

A. I cannot remember that; the reason why I remember something about the contract is, I asked him if he would sign his name, and he said no, and I wrote his name myself.

Q. Do you know a fellow by the name of White and Grace?

A. Yes, sir.

Q. Don't you know one or the other was there?

A. It seems to me that some of the Lockhart men were there.

Q. What became of Albert that day?

A. He was released, I think.

Q. Did he go off with anybody?

A. I do not know.

Q. You do not know what Albert was charged with?

A. No, sir.

Q. Do you know one Joseph Barsota, another German?

A. It seems to me that I recollect him in a case there, a man by that name.

Q. When was that?

A. Some time about the last of July, I think.

Q. Did you represent many of these foreigners there?

A. That is the only one.

287 Q. Your recollection ought to be pretty distinct; in what way did you represent Barsota?

A. I defended him before the Court; they had him charged with obtaining goods under false pretenses.

Q. What Court?

A. Johnson's court.

Q. Was Mineiky present?

A. Yes, sir.

Q. Were there any witnesses against him?

A. I think Mr. Harlan was there, and I don't remember that he testified, but he testified, and Mr. Sandor, he was the interpreter.

Q. You represented this man, what became of him on that trial?

A. He was acquitted on that case.

Q. Where did he go then?

A. They swore out another warrant and put him in jail.

Q. Who swore out the warrant?

A. Mr. Harlan.

Q. Did you see the affidavit that you are testifying to about?

A. The last one?

Q. Yes, sir?

A. I am not sure about that; I might have seen it, but I cannot say that I did.

Q. Is this the affidavit? (Handing paper to witness.)

A. This was the affidavit made in the case I represented him in.

Q. Who made that affidavit?

A. Mr. Harlan swore that he made it; I sprung the point that it was not his signature, and he placed his signature to it in my presence; I might have seen these others, but I do not remember that I did; I did not have anything
288 to do with it after the case was over.

Q. You say you appeared for him on the second charge?

A. No, sir.

Q. Were you employed by Barsota?

A. Why, a man came down there with him when he was arrested, by the name of Dr. White, I think; and he was the man that employed me.

Q. You did not represent him on the second charge?

A. No, sir.

Q. Do you know what became of Barsota afterwards?

A. Why, my opinion is he was put in jail that night.

Q. Do you know of his having a trial or having any appearance in court subsequent to the time he was put in jail?

A. I saw them the next morning with Mr. White, Mr. Lemater, and Mr. Sandor, there in Lawyer Brassel's office fixing up some kind of a contract then.

Q. Did you witness that?

A. I did not witness it, except I saw them together; I won't be sure, I might have witnessed it.

Q. This contract that Albert entered into, do you know who prepared that?

A. No sir; I do not; I might have written it myself; I do not remember that I did.

Q. You were called upon to witness it?

A. They just called me to witness it.

Q. Do you know about the substance of that paper, what that contract was?

A. No, sir.

Q. Do you know what Albert was to do after that contract?

A. I understood it that he was to work at Lockhart.

289 Q. For what?

A. For taking him out of jail.

Q. Do you know what he was charged with?

A. No, sir.

Q. Well, referring back to the occurrence when you saw these three men, two got out to go into the bar room in Florala, did not you have same conversation with these parties about this man?

A. I do not know that I had any conversation.

Q. What did you hear others talking in your presence?

A. I was right close up to the buggy, in fact I went up and took hold of the dog in the buggy, and asked him what he took him in the buggy for, and he said he had give out in one of his feet, and while I was looking at the dog somebody asked what have you all been doing? What you all been doing with this man, or something, and they made the remark, one of the three, I do not know which one, that he had run away, and we run the scoundrel down—something like that.

Q. What did he run away from, where from, and what for?

A. No, sir; not that I remember.

Q. Where did you understand that he ran away from?

A. From Lockhart, I understood.

Q. That they had run the scoundrel down, and what were they going to do with him?

A. They did not say.

Q. They did not say whether they were taking him back or not—was that expression in connection with the use of the dog that you were petting at the time that they were using the dog for the purpose?

A. I do not think they said anything about the dog running him; that is about what was said, I remember very distinctly they said he had run away, he left, or something to that effect, and that they run the scoundrel down,
290 or something like that.

Cross Examination.

Q. You are a lawyer in the State of Alabama, are you not?

A. Yes, sir.

Q. You are more or less familiar with the laws of the State of Alabama?

A. Yes, sir.

Q. Is it a criminal offense there to obtain money under false pretenses?

A. Yes, sir.

Q. For goods?

A. Yes, sir.

Q. Is it criminal offense under the laws of that State?

A. Yes, sir.

Q. Do you know whether there is a statute making it a criminal offense under the laws of the State of Alabama to enter into a contract to perform labor, and sign under that contract, and then violate that contract?

A. I think it is; yes, sir.

Re-Direct Examination.

Q. Now, you say you know it is agianst the laws of the State of Alabama?

A. That is the way I understand it.

Q. Do you know what the penalty is?

A. It runs like larceny.

Q. Is it a penitentiary offense, in fact, is it not a case that requires a jury trial?

A. If it goes over ten dollars, I think it is.

Q. Do you not know what the amount in this case
291 was?

A. No, sir.

Q. You do not know of any law of Alabama, do you, that authorizes a court to turn a man over to anybody else to work out such a fine? Was Barsota released from that charge?

A. Yes, sir.

Q. Was there ever any trial?

A. The one I represented him in there was.

Q. Who were the witnesses against him?

A. I do not remember now—Mr. Harlan, I think had one.

Q. Did he testify?

A. I think he did.

Q. Do you remember what his testimony was, what sort of a case did he make against the man, his testimony?

A. Part of that they let him have some furniture and several different things he got out of the store, and had not paid for it, and he owed a board bill.

Q. Was not transportation put in there, too; was that not one of the charges?

A. Not in my case; I understood the second charge was made for transportation.

Counsel for defendants then and there moved to strike out the statement of the witness as to what the second charge contained, because the affidavit itself is the best evidence undoubtedly.

Counsel for Government:

We won't insist on it.

Q. Do you know, as a matter of fact, that immediately after this man was discharged in the case you represented him in, that Mr. Harlan made a second affidavit against him?

A. Yes, sir.

Re-Cross Examination.

Q. A Justice of the Peace in the State of Alabama, where a man is charged with a felony, may issue a warrant and conduct the examination, may he not? 292

A. Yes, sir.

Q. For his arrest and bring him before him, and may fix the amount of bail, and place him in jail in default of bail?

A. Yes, sir.

Q. And if it is not a bailable case may place him in jail without bail?

A. Yes, sir.

Q. There was a second charge preferred against him before a Justice of the Peace?

A. Yes, sir.

Q. Do you know what the records show with reference to that man in the J. P. Court?

A. I do not know.

Q. You do not know of your own knowledge of the second charge, whether he entered a plea or not, do you?

A. No, sir.

Q. You do not know anything about that?

A. No, sir.

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Thereupon the Government called as a witness one JAMES JOHNSON, who having been duly sworn, testified as follows:

Direct Examination.

Q. What office do you hold?

A. Justice of the peace.

Q. Where?

A. At Florala.

Q. What district?

A. Alabama.

Q. In a particular district or do you cover the whole county?

A. I have some jurisdiction over the whole county, but I am in a certain beat.

Q. You have jurisdiction of almost everything against the laws of Alabama; take jurisdiction of all kinds of cases?

A. No, sir.

Q. Do you know Mr. Harlan?

A. Yes, sir.

Q. Did you know Mr. Moneke?

A. Yes, sir.

Q. What is he?

A. He is deputy sheriff.

Q. Do you know Mr. Sandow, the interpreter?

A. Yes, sir.

Q. Did you know a man by the name of Dr. Grace?

A. Yes, sir.

Q. Do you know a fellow by the name of Barsoda?

A. I have seen him one time.

Q. Where did you see him?

A. In my office.

Q. That is in your court?

204 A. Yes, sir.

Q. Do you know a man by the name of William Albert?

A. Yes.

Q. Where did you know him?

A. In my court.

Q. Did you see a man by the name of Krum?

A. Yes, sir.

Q. Where did you see him?

A. In my office.

Q. In your Court?

A. Yes, sir.

Q. Examine these papers and see whether they are the records of your office and what they purport to be. (Papers here handed to witness.)

Counsel for defendants object to the introduction of the papers on the ground that they are irrelevant and immaterial. Imagine what a conflict would arise in the jurisdiction of the Courts of the United States and of the various States if when a man is charged with an offense in these Courts you can go in there and make every officer of the State a party to a conspiracy. I do not know where it would end.

Objection overruled and exception noted.

Q. Do you recognize those documents, Judge?

A. Yes, sir.

Q. Now, what is the first you hold in your hand?

A. Joseph Barsoda, affidavit made by W. S. Harlan.

Q. Was that made in your office?

A. Yes, sir.

Q. By whom?

A. By Mr. Harlan.

295 Q. Did Mr. Harlan sign it?

A. Yes, sir.

Q. What did it charge this man Barsoda with? Judge, you can read that charge.

Counsel for Defendants:

We would like to know if the paper is going to be offered in evidence?

Counsel for Government:

Yes, sir.

Counsel for defendants object to its introduction upon the ground that the paper is the original record of another Court and cannot be admitted here and cannot be filed here.

By the Court:

I know that it is customary to produce certified copies, but I never heard that it was a rule that you could not use the originals.

Objection overruled and exception noted.

Q. Now, Judge, the first paper you hold in your hand is an affidavit against Barsoda, made by Mr. Harlan, is it?

A. Yes, sir.

Q. Will you please read that charge?

A. Witness here read affidavit as follows:

The State of Alabama,
Covington County:

Before me, James Johnson, a Justice of the Peace in and for said county, personally appeared W. S. Harlan, who being first duly sworn, deposes and says on oath that in said county, on or about the 5th day of August, 1906, one Joseph Barsoda did obtain money by making false statements and also did obtain blankets and other merchandise from the store of the Jackson Lumber Company, at Lockhart, Alabama, against the peace and dignity of the State of Alabama.

(In lead pencil.) W. S. HARLAN.
(In ink.) W. S. HARLAN.

Sworn to and subscribed before me this the 15th day of August, 1906. JAMES JOHNSON, J. P.

296 Q. You issued a warrant on that, did you?

A. Yes, sir.

Q. Was Barsoda brought before you?

A. Yes, sir.

Q. Was anybody present when Barsoda was brought before you?

A. Yes, sir; there were several men present.

Q. Was Mr. Harlan present?

A. Yes, sir; he was there.

Q. Was Dr. Grace or any others of the Jackson Lumber Company?

A. I do not remember about that.

Q. Was Barsoda given any trial on that charge?

A. Yes, sir; he had a trial.

Q. What was done?

A. I discharged him.

Q. Then there was no proof before you that he had obtained any blankets without paying for them?

A. No, sir.

Q. They failed to make that case out?

A. Yes, sir; they failed to make out the case of false pretense and I discharged him.

Q. Turn on the next page and see what that is. Is that against the same man?

Counsel for the defendants move to strike out the testimony of the witness upon the ground that the offense relates to a transaction subsequent to the overt act of conspiracy as charged in the indictment.

Overruled and exception noted.

297 Q. Well, Judge, when was that affidavit made, the second one against the man?

A. On the 16th of August, 1906.

Q. That was the same day?

A. No, sir; the other was the 15th.

Q. The sixteenth day of August, the one you hold in your hand now?

A. Yes, sir.

Q. What does that charge Barsoda with?

A. You want me to read it?

Q. Yes, sir.

A. Witness here read the affidavit which was as follows:

"The State of Alabama,
Covington County:

Before me, James Johnson, a Justice of the Peace in and for said county, personally appeared W. S. Harlan, who being duly sworn, deposes and says, that he has probable cause for believing and does believe that in said State and county and within sixty days before the commencing of this prosecution, Joseph Barsoda, who being an emigrant and having entered into a contract with the Jackson Lumber Company for passageway has abandoned the service of the Jackson Lumber Company without paying back said passage money and other advances to the said Jackson Lumber Company to the amount of thirty-six dollars against the peace and dignity of the State of Alabama. W. S. HARLAN.

Sworn to and subscribed before me this the 16th day of August, 1906.

JAMES JOHNSON, J. P.

Q. Who made that affidavit?

A. W. S. Harlan.

298 Q. Was any warrant issued on that affidavit?

A. Yes, sir.

Q. Was Barsoda returned to your court on that charge?

A. Yes, sir.

Q. Did he get any trial in that case; what was done with him when he was brought before the Court?

A. He did not have any trial in that case.

Q. Why?

A. Mr. Harlan came over the next morning—I am not certain whether it was Mr. Harlan or Mr. White—one or the other—and the interpreter came along—

Q. This man here?

A. Yes, sir; Sandow, but the night before they came over to my office, there was a woman along with this man when he was arrested and she came down from the little mill by the Central of Georgia Railroad where the sheriff got him—she came down to Lockhart and the next morning the woman came along—

Q. That was the day you had set apart for the trial of Barsoda?

A. Yes sir; they come in—

Q. Where was Barsoda in the meantime over night?

A. He was locked up—that is my recollection.

Q. They came down the next day and what was done then?

A. They withdrew the proceedings and made a new contract with Barsoda.

Q. That was not sworn to, I guess—the new one?

A. I do not know.

Q. Was that contract made in your office?

A. No, sir; it was made, I think, in Mr. Bailey's office.

Q. He is a lawyer there?

299 A. If not it was in Mr. Brazzell's.

Q. You never punished him on that charge?

A. No, sir.

Q. He never came into court?

A. No, sir. Just issued the papers.

Q. Who asked you to dismiss the suit?

A. Mr. Harlan, or Mr. White—which ever one it was that come to my office.

Q. You dismissed the suit, did you?

A. Yes sir; withdrew and I discharged him. They went off together.

Q. Now, the important thing is, what became of the costs?

A. The company paid the costs to the sheriff.

Q. What became of Barsoda? Did he stay in jail after that?

A. No, after they made the contract with him he and the woman went on with them.

Q. On where?

A. I reckon he went on to Lockhart.

Q. You do not know what the contract was?

A. No, I never saw that.

Q. Did you understand from Mr. Harlan or the other man whoever carried Barsoda off, what he was going to do?

A. They talked it over in my presence, but I never saw the contract. Him and the woman was to go back and work out the amount.

Q. As well as your costs?

A. Yes, sir; I think the costs were added in.

Q. Well, let us go onto the next.

A. This is the case against C. Krum.

Q. Was that about the same time?

A This was made on the 9th of August.

300 Q. What was the character of the charge there; who made the affidavit against Krum?

A. W. S. Harlan.

Q. What did he charge him with?

A I will read it.

Q. All right.

A. Witness here read affidavit against C. Krum as follows:

"The State of Alabama,
Covington County:

Before me, James Johnson, a Justice of the Peace in and for said county, personally appeared W. S. Harlan, who being first duly sworn, deposes and says on oath that he has probable cause for believing and does believe that in said State and county and within sixty days before the commencement of this prosecution, C. Krum, who being an emigrant and having entered into a contract with the Jackson Lumber Company for passage money, has abandoned the services of said Jackson Lumber Company without paying back said passage money and other advances to said Jackson Lumber Company to the amount of twelve and 30-100 dollars, against the peace and dignity of the State of Alabama.

W. S. HARLAN."

Sworn to and subscribed before me this the 9th day of August, 1906. JAMES JOHNSON, J. P

Q. What did you do on that; did you issue a warrant?

A. Yes, sir.

Q. Was Krum returned to your court on that charge? Have you got the warrant there; there was a return to that warrant?

A. Yes, sir; this is the warrant issued on that affidavit.

Q. Do you know whether Krum was arrested and brought before you?

301 A. Yes, sir. he was arrested.

Q. By whom?

A. Mr. Moneke, I reckon.

Q. Is there anything on the back of that that indicates?

A. Yes, sir; he was arrested by Mr. Moneke, deputy sheriff.

Q. Was Krum ever arraigned before you?

A. Yes, sir.

Q. You had him before you?

A. Yes, sir.

Q. What sort of a proceeding took place in your court with Krum?

Counsel for the defendants object to the testimony and introduction of records upon the ground that it is irrelevant and immaterial and the transaction is subsequent to the overt act of conspiracy as charged in the indictment, and upon the ground that it is an original record of another Court.

Objection overruled and exception noted.

Q. Read what your docket says as to the disposition of the Krum case?

"The State
vs.
C. Krum.
State's witnesses: W. H. Boring and W. S. Harlan.
Charge:—Emigrant leaving service without paying back advances. (Code, Sec. 5510.)
August 9th, 1906. Affidavit made by W. S. Harlan and warrant issued and executed by C. H. Moneke, Constable.
August 10th, 1906: This day this case was called for preliminary trial and the defendant, C. Krum, being in court, and for his plea to said charge says that he is guilty. The Court after the examination of the witnesses for the
302 State finds that there is probable cause to believe the defendant guilty, and fixes his bond in the sum of one hundred dollars, and on his failure to make said bond, was committed to jail."

Q. Bond for what? What was the bond for?
A. He plead guilty to the charge.
Q. What was the bond for?
A. That was the appearance bond to the Circuit Court.
Q. He failed to give that bond?
A. Yes, sir.
Q. And you remanded him to jail?
A. Yes, sir; but never taken him to jail. They locked him up in the town prison.
Q. How long had he been in the town prison at the time this charge was heard?
A. This was on the 10th and on the 13th, 1906, there was this entry: "This day came the prosecutor, W. S. Harlan, and withdrew the prosecution and paid all costs in said cause."
Q. Nothwithstanding the fact that you had remanded him to jail for his appearance before the Circuit Court, Mr. Harlan comes in and dismisses the case?
A. Yes, sir; he come in and withdrew.

Q. How did you get your costs?

A. He paid the costs; Harlan paid the costs.

Q. Do you know whether he entered into any contract with this man Krum?

A. Yes, sir.

Q. He did?

A. Yes, sir.

Q. Was that in your presence?

303 A. Yes, sir; it was read in my presence; I heard them read it.

Q. That was on the thirteenth that this prosecution was withdrawn and the contract entered into?

A. Yes, sir.

Q. Where had the man been from the time you had committed him up to this time?

A. In the town prison.

Q. You say you heard that contract?

A. Yes, sir.

Q. Now, what was the substance of the contract as you remember it; you have not got—you never had a copy of it?

A. No, sir.

Q. Now, let us have what was in the contract?

Counsel for defendants object to the introduction of the evidence sought to be offered by the witness; first, upon the ground that it is irrelevant and immaterial; second, that it seeks to establish a different offense from that charged in the indictment; third, that in establishing a second offense or a different offense, that of malicious prosecution, the evidence is calculated to prejudice the defendants in the mind of the jury; fourth, no sufficient predicate has been laid for the admission of the evidence now offered.

Overruled and exception noted.

Q. Was that contract signed in your office—the Krum contract?

A. I do not think it was. I think it was in Mr. Brazzel's office, adjoining my court.

Q. Do you know who was present at the time; were you called in to witness it; how did you happen to be there?

A. Just happened in there; happened to be around there.

304 Q. Were you a little bit interested about the costs?

A. No, sir; I was not after the costs.
Q. You heard it read?
A. Yes, sir.
Q. Now tell us, as well as you can, the substance of that contract, what Krum was to do and how it ended and whether the costs of this proceeding were added in that contract and what he was to do?
A. I do not remember the amount.
Q. It included your costs, did it?
A. Yes, sir.

By Defendants' Counsel:
Q. Do you know the terms of that contract? Are you in a position to state that you know the terms of that contract?
A. I do not know all there was in it. I read it over, some of it and can give you the substance of the contract.
Q. Of the entire contract?
A. No, sir.
Q. You could not give the substance of the entire contract?
A. I could only give state that he was to go back and work it out at one dollar and thirty-five cents per day—
Q. You are testifying to what the contract contains. That is what we want to test your ability to do. Can you state the substance of the entire contract?
A. No, sir.

We submit that no sufficient predicate has been laid.

Overruled and exception noted.

By Government's Counsel:
Q. Give us as well as you remember the substance of that contract and agreement?
305 A. The lumber company agreed to pay him, I think it was one dollar and thirty-five cents per day for his time until he worked out the amount.
Q. Was there not some stipulation in that agreement as to how long he was to stay there and what sort of a hand he was to be?
A. I do not remember whether there was anything like that or not. I know that Krum told them he had never done much hard work and would like to work in the shade at the commissary or the mill or house or shed.

Q. Was that in the contract?

A. I do not know whether that was in the contract or not.

Q. Confine yourself to the contract. You say you do not remember the exact amount?

A. No, sir.

Q. But he was to go back?

A. Yes, sir; he went back.

Q. And worked out the indebtedness that he had been arrested for?

A. Yes, sir.

Q. At the rate of one dollar and thirty-five cents per day?

A. That is my recollection.

Q. What was the consideration of that contract? Was there not a consideration that they could not proceed any further against him?

A. I do not remember whether there was any consideration along that line or not.

Q. Didn't you hear that discussed and talked among them?

A. Mr. Brassell wrote it up and I was in there when they was reading it over to the man, but I happened to be in there when they were reading it over.

306 Q. Have you another affidavit there—you have shown us three. Look and see if you have one made out by another party against another party?

A. Here is one made by Robert Gallagher against one William Albert.

Counsel for Government here called upon Mr. Harlan and defendants' counsel to produce contracts.

Defendants' Counsel:

The statement of counsel is not sufficient.

Government's Counsel:

On the last trial announcement was made that the defendant, Harlan, had been notified by subpoena duces tecum, which he admitted he had received in my presence and in the presence of others and stated before the commencement of the last trial that he had such contracts in his possession and he said soemthing about producing them when he felt like it, or when the proper time came—

Counsel for defendants object to the statement of counsel in the presence of the jury—a statement of fact not sworn to.

Thereupon the witness, Johnson, was excused, and R. P. REESE being duly sworn, testified as follows:

Direct Examination.

Q. Do you know Mr. Harlan?

A. I do.

Q. Do you remember meeting Mr. Harlan in the office of the district attorney during the first week of the trial here against Huggins, Hilton and Harlan?

A. It was prior to the commencement of that trial. I think perhaps it was a day or two prior to the com-
307 mencement of that trial.

Q. Do you remember a conversation that was had with Mr. Harlan with reference to certain contracts that Mr. Barsoda and others—

Counsel for defendants object to testimony upon the ground that it is irrelevant and immaterial and not the best evidence of the notice served upon the defendant, and upon the further ground that no sufficient predicate has been laid—not shown that he was the party authorized or that Mr. Harlan knew that he was authorized to demand any paper of him and no proper predicate has been laid and that any conversation between Mr. Harlan and Mr. Reese would not have any binding effect upon him.

Overruled and exception noted.

Q. Did Mr. Harlan in this conversation admit the service upon him for these contracts between the Jackson Lumber Company and the parties, Krum, Barsoda and Albert?

A. Mr. Harlan said this, that the subpoena—

Counsel for defendants object upon the further ground that the subpoena duces tecum with the return thereon would be the best evidence as to its service.

Government's Counsel:
To obviate that we offer that subpoena.

Defendants' Counsel:
The duces tecum is not directed to Mr. Harlan nor anybody who has authority over them.

Government's Counsel:

We now offer in evidence the subpoena duces tecum addressed to William W. Porter, Lockhart, Alabama, authorizing him or commanding him to bring or produce in Court books of record and documents as per attached memorandum, as follows: 308

"Under and by virtue of the attached subpoena and in conformity therewith you are hereby required to produce at the time and place mentioned in said subpoena the following records and documents, to-wit:

Books of account and records of the Jackson Lumber Company containing statement of the accounts of the said company with Trudich Mihaly, C. Krum, William Albert and Joseph Barsoda;

Also the contract or contracts entered into by and between the said Jackson Lumber Company and C. Krum dated on or about August 13, 1906, wherein the said C. Krum agreed to work for the said Jackson Lumber Company in consideration of an indebtedness then alleged to be due between the the said parties.

Also the original contract or contracts entered into by and between the Jackson Lumber Company and William Albert, dated on or about the 24th day of July, 1906, wherein the said William Albert agreed to work for the said Jackson Lumber Company in consideration of an indebtedness then alleged to be due between the said parties.

Also the original contract or contracts by and between the Jackson Lumber Company and Joseph Barsoda, entered on or about August 17th, 1906, wherein the said Joseph Barsoda agreed to work for the said Jackson Lumber Company in consideration of an indebtedness then alleged to be due between the said parties.

The return on the reverse side of the subpoena was as follows:

"Received this sub. this 23rd day of October, 1906, and executed the same by serving a true copy upon William W. Porter at Lockhart, Ala., this 4th day of November, 1906.

T. F. McGOURIN, U. S. Marshal,
Per R. P. WHARTON, Deputy U. S. Marshal.

309 Q. Now, Mr. Reese, what position do you hold or did you hold at the time of this conference or conversation referred to?

A. Assistant U. S. District Attorney for this district.

Q. Now state so that the stenographer can get it what transpired between the district attorney and the conversation that occurred in your presence with Mr Harlan?

A. Mr. Harlan came into your office to know something with reference to the trial, when they would get their witnesses here and I do not remember whether you mentioned to him or he mentioned it himself, but he took a bundle of papers out of his pocket and said that he had the subpoena or the subpoena had been served on the bookkeeper, Mr. Porter, but he protested against bringing the office books down containing those accounts as they were very large and bulky and ran through, as he said, a number of books, but he pulled out from the papers that he had some statements and says we have here statements of their accounts and he says I have also the contracts that you called for here in my possession and at the proper time if I am advised, I will produce them; that was said in a joking way. He did not propose to give them up now.

Q Did he state where W. W. Porter was?

A. I believe he said he was sick—had been to Hot Springs and Livingston, Alabama.

Cross Examination.

Q. You were discussing the different trials at that time?

A. I do not remember Judge Reeves whether or not the
case had been set where Mr. Harlan was interested—
310 I do not remember whether it had been set. I think
it had been set—it had been set then and he was required to produce those books on the trial then set.

Q. On which trial?

A. I do not know; the subpoena will show that.

Q. Have you given him any notice to produce any paper at this trial?

A. Have I. No, sir; nor do I know that any has been made.

Q. Do you know whether Mr. Harlan knew that you were the Assistant U. S. District Attorney at that time?

A. I do not know.

Q. How long have you been such attorney?

A. Since the first of November. The conversation was had with Mr. Sheppard, Judge Reeves.

Q. In that conversation, didn't Mr. Harlan say to you that he had found this subpoena somewhere at Lockhart in his office, or something of that kind?

A. As I stated, he said he had the subpoena. I do not remember whether he said he got it at Lockhart, but my recollection is that he said he got it at Lockhart.

Q. He did not admit that he felt bound by this subpoena, it being directed to somebody else?

A. I have stated the conversation to the best of my recollection as to what took place.

Q. Now, do you remember whether there was any statement as to whether Mr. Porter was a timekeeper or a bookkeeper?

A. No; I think Mr.—my recollection is that Mr. Harlan said our bookkeeper—the writ or the summons was served upon our bookkeeper—that is my recollection of what he said.

Q. Are you clear about that; do you feel pretty clear on it?

311 A. I did not get any other impression; I have no other impression at this time.

Q. I want to find out whether it was a fine impression or a light impression?

A. I have a strong impression and no other impression. He said he was at Livingston, Alabama, at that time.

Q. Do you remember whether he stated that he had the contracts with him or that they were at Lockhart?

A. He said I have the contracts and pulled out this bundle of papers that he had in his pocket and my recollection is that he indicated that they were here. Of course, I would not say that he said that I have them here, but he suited the action to the word and pulled the papers from his pocket and went further and says as far as the books of account are concerned they are entered in our company's books, which are very large and bulky, and he says they run through several books and would be very inconvenient to handle, but he says I have statements of these accounts which may suit your purpose, speaking to Mr. Sheppard, just as well and with that he made some joking remark about not turning the papers over to Mr. Sheppard and put them back in his pocket and that was all there was to it, as I recollect.

By Government's Counsel:

I make this announcement in Court. That at this stage of the trial the United States, the prosecution, makes demand upon W. S. Harlan and the defendants in this case to produce the original contracts of C. Krum, Joseph Barsoda and William Albert with the Jackson Lumber Company entered into on or about the 17th day of August, 1906, and the
312 15th day of July, 1906, at Florala, Alabama, and in the default or on default of the defendants to pro-

duce such contracts, then the Government insists upon the testimony of James Johnson remaining in the record and that the Government will proceed to examine him as to the contents or the nature of those contracts.

Thereupon JAMES JOHNSON was re-called to the witness stand and testified as follows:

Q. Now, judge, we were talking about which contract, do you remember—the Crum or the Barsoda?
A. We got through with Crum and Barsoda.
Q. Now, about William Albert—.

Defendants' Counsel:
You do not propose to give us time to get these contracts?

Government's Counsel:
You have had since the 4th day of November.

Q. Have you got a record of the proceedings against William Albert?
A. Yes, sir.
Q. Well, what was that? Have you got the affidavit there?
A. Yes, sir.
Q. Who made that affidavit?
A. Robert Gallagher.
Q. Was that in your presence sworn to before you?
A. Yes, sir; he signed it before me.
Q. That is against whom?
A. William Albert.
Q. Read that then; what does that charge Albert with?

313 Defendants' Counsel:
It will be understood that the same objection is interposed to this as to the others.

By the Court:
Yes.

Q. Well, read it.
A. Witness then read affidavit as follows:

"The State of Alabama,
Covington County.

Before me, James Johnson, a justice of the peace in and for said county, personally appeared Robert Gallagher, who, being first duly sworn, deposes and says on oath that in said county on or about ...., one William Albert procured money from him under false statements or false pretense with intent to defraud him, and has good cause to believe and does believe that William Albert is guilty of obtaining money under false pretense against the peace and dignity of the State of Alabama.

ROBT. GALLAGHER.

Sworn to and subscribed before me this 17th day of July, 1906.

JAMES JOHNSON, J. P."

Q. What amount is alleged there that he had obtained?

A. No amount alleged here.

Q. You do not know whether you had final jurisdiction of that case?

A. I understood the amount was ten dollars.

Q. But there was no amount inserted in the affidavit?

A. No, sir.

Q. Your record, that document you are just reading, does it show what was done on that affidavit; was a warrant issued?

A. Yes, sir.

Q. Any return to it?

A. Yes, sir.

Q. Let us see what that is.

314 A. Executed this warrant by arresting one William Albert this 21st day of July, 1906, C. H. Moneke, deputy sheriff.

Q. Was Albert brought before you?

A. Yes, sir.

Q. Was there any trial?

A. Yes, sir; there was a trial.

Q. What did you do with him?

A. I found him guilty and fined him one cent.

Q. Was that because there was no amount charged in the affidavit against him, or why?

A. No, sir; because I wanted to make it as light as possible.

Q. Who was present?

A. I do not remember who was present, but several men in the court room.

Q. Was any of the Jackson Lumber Company there?

A. I think Mr. Gallagher was in there, and I do not remember whether there was anybody else or not.

Q. Was any conversation had in your presence or did you hear any conversation between Albert and Mr. Gallagher about what was to be done in case you put a one cent fine on him?

A. No, sir.

Q. Who suggested that to you of putting a fine of one cent on him instead of binding him over for his appearance?

A. I do not know that anybody suggested it.

Q. Why was it done?

A. He said that he owed the money and my recollection is that he claimed that Mr. Givens owed him some money and he got the money from Mr. Gallagher upon the statement that Mr. Givens owed him money and Mr. Gallagher found out that he did not owe him anything.

315 Q. Was there not some negotiations entered into between Gallagher and Albert in your Court?

A. No, sir.

Q. Was there not some discussion and some talk between the parties in your Court? What became of Albert?

A. I do not remember whether they had any talk or not.

Q. Do you remember whether you got your costs?

A. Yes, sir.

Q. Who paid it?

A. I do not know who paid it. The deputy sheriff got it.

Q. Didn't they come to your Court, these parties there that morning, or did they not? Didn't you say they never came to your Court at all until after this arrangement was made or after you decided to fine him one cent—.

Counsel for defendants object to this course of examination because it seeks to literally overturn collaterally a judgment of that Court.

The Court does not see such purpose in the effort at all as interfering with the judgment of that Court. The Court understands the question to explain certain transactions that took place there—how they came to be in that shape.

Defendants' Counsel:

And upon the further ground that it is immaterial and irrelevant.

Overruled and exception noted.

Q. You must have had some reason for fining a man one cent. Did you know whether you had jurisdiction to try him with a jury or without a jury. In case he had not plead guilty what would you have done with him?

A. Of course, I think the amount was ten dollars.

316 Q. Can you try a man for that charge without empaneling a jury?

A. I think the justice has jurisdiction.

Q. You do not know?

A. The lawyers said I had it.

Q. You were governed by what the lawyers said?

A. Yes, sir.

Q. You think that is always a safe reliance?

A. It ought to be if a lawyer is what he ought to be.

Q. Then you fined him one cent. You never saw him any more after that?

A. No, sir; they went out.

Q. Who went out?

A. The deputy sheriff, Mr. Gallagher and the crowd generally; I do not remember who was in there.

Q Did you know where Albert was going? Was Moneke going to take him to jail?

A. They said Mr. Gallagher was going to pay it up and he was going back to work for Mr. Gallagher.

Q. Was not that the reason you imposed that light fine?

A. That might have been.

Q. You wanted him to go back to work out this debt?

A. If he wanted to.

Cross-Examination.

Q. There is a statute in the State of Alabama which makes it a penalty for a man under a contract to obtain goods or money under that contract and then abandon that employment without repaying it?

317 A. Yes, sir.

Q. You acted on your best judgment of the law and the facts in carrying on these trials that you have just narrated, did you not?

A. Yes, sir. I tried to do as near right as I could.

Q. You are a justice of the peace in the State of Alabama?

A. Yes, sir.

Q. How long have you been such justice?

A. About two years.

Q. And you were endeavoring to the best of your judgment to administer that law in those cases?

A. I was.

Re-Direct Examination.

Q. You say you have a law there that authorizes the arrest of a man for not paying back his transportation—an emigrant law?

A. That section does.

Q. You have a section to that effect?

A. Yes, sir.

Q. Didn't you know that your own Supreme Court of Alabama had said that that law was unconstitutional and invalid?

A. No, sir.

Q. Didn't you know—hadn't you heard among the lawyers that that law had been attacked and set at naught by both the Federal and State Courts?

A. No, sir.

Q. Two years ago?

318 A. I did not know anything about what the Supreme Court did.

Q. You do not keep up with what they do?

A. No, sir.

Q. You did not know at the time you issued this warrant on that affidavit that your own highest Court in the State of Alabama had held that null and void?

A. The lawyer wrote up these affidavits and warrants.

Q. Was that affidavit in the same lawyer's handwriting?

A. One was in.

Q. Who was the other in—whose handwriting?

A. Mr. Bailey wrote one and a lawyer by the name of Bazzell wrote the other.

Q. Whose lawyer was Bailey?

A. The Jackson Lumber Company.

Q. Mr. Brazzell, whose lawyer was he at the time the affidavit was made?

A. The Jackson Lumber Company.

Re-Cross Examination.

Q. You honestly believed then that that was a valid subsisting law in the State of Alabama?

A. Yes, sir; I believed it; it was there on the book.

Q. You did not know that any court of the United States, unless it be a district judge, had ever declared that law unconstitutional, did you?

A. I never heard anything about it being unconstitutional before.

319

Thereupon the Government called as a witness one C. H. MONEKE, who, having been duly sworn, testified as follows:

Direct Examination.

Q. Where do you live?
A. Florala.
Q. Do you hold any honorable position, office or trust?
A. Yes, sir.
Q. You have a headache?
A. I am sick.
Q. What is that office?
A. Deputy sherff.
Q. Where?
A. Aa Florala, Covington County, Alabama.
Q. What State?
A. Alabama.
Q. How long have you been sick?
A. All day.
Q. Were you such deputy sheriff in the month of July last?
A. Yes, sir.
Q. Do you know William Albert?
A. Yes, sir.
Q. Do you know C. Krum?
A. Yes, sir.
Q. Do you know Joseph Barsoda?
A. Yes, sir.
Q. Do you know W. S. Harlan?
A. Yes, sir.
Q. Do you know Dr. Grace?
A. Yes, sir.
Q. Do you know Dr. Sandow? Oscar Sandow?
A. Yes, sir.

320 Q. Do you know when Barsoda; did you ever arrest Barsoda in Florala?

A. Yes, sir.

Q. Did you arrest Krum?

A. Yes, sir.

Q. Was it about the same time?

A. No, not exactly same time; a few days apart.

Q. What did you do with Barsoda?

A. I brought him before the justice of the peace there?

Q. Was he in jail?

A. I put him in jail?

Q. Was he taken out of jail?

A. Yes, sir.

Q. What became of him?

A. He had his trial.

Q. That is Barsoda we are talking about; did he have one trial or more?

A. He was discharged on one trial and—

Q. Was he immediately arrested?

A. Yes, sir.

Q. On another?

A. Yes, sir.

Q. Well, what was done with him on the second one?

A. I remember they compromised the matter with him and he went back to Lockhart.

Q. Do you know what that compromise was?

A. I do not remember exactly. I did not pay no attention to it.

Q. Were you present when the parties talked it over? Who was it that compromised with Barsoda?

321 A. Mr. Bailey drew up the contract, if I remember.

Q. Who was present when Barsoda agreed to go back?

A. Mr. Sandow was there.

Q. Now, what was the terms of the compromise; what as you recollect it, the substance of it?

A. He was to go back there and work for one dollar and a half per day as I remember it.

Q. For how long?

A. Until the amount was paid, I believe.

Q. Do you know what amount was needed or they claimed?

A. No, sir.

Q. How long have you been sick?

A. All day.

Q. Were you sick this morning?

A. Yes, sir.

Q. You do not know what the amount of the Barsoda debt was?

A. No, sir; not exactly the amount.

Q. Who turned him out of jail?

A. I went there myself and turned him out.

Q. About C. Krum, do you know what he was charged with?

A. Obtaining money under false pretense or something like that. I do not remember exactly.

Q. Passage money?

A. Yes, sir.

Q. Did he have any trial?

A. Yes, sir.

A. Well, who was present at his trial; I mean of the Jackson Lumber Company—I do not care about the people from around there?

A. There were several in the room.

322 Q. Was Mr. Harlan there?

A. Either Mr. Harlan or Mr. White; I do not remember exactly.

Q. What was done with Krum?

A. He went back to work for the company.

Q. Do you know whether it was on a compromise or not?

A. I do not know.

Q. You do not know whether an agreement carried him back?

A. They agreed together.

Q. What was that; did you hear them talking it over?

A. No, sir.

Q. How did you come to be present?

A. I was right there in the office. I generally stays in the office.

Q. Who collected the costs in the Krum case?

A. The judge.

Q. Who collected them in the Barsoda case?

A. I think I collected them myself.

Q. How was that paid; who paid it?

A. I went over to the office and got it.

Q. What office?

A. The Jackson Lumber Company.

Q. In this compromise how was that to be paid back?

A. He was going to work it out at one dollar and a half per day.

Q. Now, did you know William Albert? Do you remember having arrested him?

A. Yes, sir.

Q. You put Albert in jail?

A. Yes, sir.

Q. On a warrant?

A. Yes, sir.

Q. Do you know who swore out that warrant?

323 A. Mr. Gallagher.

Q. What was that for; what was he held in jail for; what charge?

A. Obtaining money under false pretense.

Q. Do you know what amount?

A. I do not remember exactly what it was.

Q. Was all the debt owing to the Jackson Lumber Company or was part of it to somebody else around town?

A. Mr. Gallagher, I think, if I remember, he assumed the indebtedness for Albert of Mr. Penton.

Q. What did Albert owe Penton for?

A. I do not know what it was for.

Q. Was it a bar bill?

A. Yes, sir; must have been.

Q. You do not know what that amount was?

A. I think it was about eighteen dollars.

Q. How long did Albert stay in jail?

A. Several days.

Q. Were you present when Mr. Gallagher came down to Florala to see Albert and did you hear a conversation between him and Albert?

A. I sent him word I had him and he had better come and get him.

Q. He came down, did he?

A. Yes, sir.

Q. You took Albert out of jail?

A. I went over there myself and got him.

Q. What took place at the buggy—the conversation between Gallagher and Albert?

A. They talked together there. I do not know what they said. I did not pay much attention.

324 Q. Have you forgot since you last testified about that conversation?

A. I had a previous conversation with Albert and he asked me to send for Mr. Givens, which I did, and he did not want to come and he asked me for to get Gallagher and he did come.

Q. Where did you go to then, from the time you took him out of jail?

A. Went up to the office.

Q. What office?

A. Judge Johnson's office.
Q. Now, what transpired there?
A. He pleaded guilty there to the charge.
Q. Under what circumstances?
A. I do not know exactly. I told Albert I told him if you owe that money why don't you pay it. He says he was going to pay it.
Q. Didn't you advise him if he owes that money to plead guilty?—

Counsel for defendants object to any conversation that occurred between him and any person not charged with the offense.

Q. Was not Gallagher present when you were talking?
A. I talked before Mr. Gallagher come.
Q. Didn't you talk when Gallagher was there?
A. Mr. Gallagher and Albert was in the room talking.
Q. Was you not present then and there when they were talking?
A. I was there, of course. I staid right there.
Q. Tell us what you heard?
A. They was talking about the amounts.
Q. What was due and what was owing?
325 A. Yes, sir.
Q. Was it not understood then and there between the parties that this man would go back and work oot this debt if Gallagher would pay it?
A. Mr. Gallagher said he would pay it for him if he would go and work.
Q. Didn't you advise Albert to do that?
A. No, sir. I just told him if he owed that money he ought to pay it.
Q. Didn't you advise him to plead guilty?
A. No, sir.
Q. Did you testify before the grand jury?
A. I did. I told him just the words I told you just now. If you owe that money if I was you I would pay it.
Q. Now, when did you tell him that; was Gallagher present?
A. While he was in jail.
Q. At any other time?
A. I might have told him outside.
Q. Didn't you swear on the last trial that you did tell it to him on the outside?

A. I might have told him on the outside. I am so worried to-day I do not know myself.

Q. Now, what were your general instructions from the Jackson Lumber Company about these foreigners and people leaving camps and going down there?

A. Nothing at all. All the message I got regarding the—

Q. What did you say the other day was the general understanding and instructions about men leaving the turpentine camps and Lockhart—didn't you testify to something?

A. I got a message once or twice to have executed warrants.

326 Q. What sort of messages?

Counsel for Defendants:
Wait a moment.

Q. Who were they from?

A. From the office.

Q. What office?

A. I suppose Mr. Harlan talking to me, asking me if I had executed a warrant.

Q. How was he talking to you?

A. Through the telephone.

Q. Did he ask you to arrest these parties passing through there?

A. He asked me if I had executed a warrant and I told him I would just as soon as I got it.

Q. Did you ever use any blood hounds in your business?

A. I used them twice.

Q. Whose hounds were they?

A. To Mr. Harlan.

Q. Who were you using them for?

A. To catch a murderer.

Q. Now, didn't you keep these dogs down there a good deal of the time?

A. No, sir. I had them one time when a man got killed by the train and I had them again when a young man was shot at the turpentine camp.

Q. What camp?

A. Mr. Radford's and I chased a man all night and I quit the next day at dinner and I went out home and they caught him that night.

Q. You did not catch him?

A. No, sir.

327 Q. You did not have to use them after Albert, did you?

A. No, sir. He was right there in town. I did not have to use them after Krum, nor neither Barsoda.

Q. Did you witness any contracts made with these parties about going back and working out these debts?

A. I seen them read over to them.

Q. You heard them reading them, did you?

A. I witnessed one, I believe.

Q. Do you know whose it was?

A. I do not remember whether it was Krum or Barsoda.

Q. You understood what the contents or what the agreement was between these parties?

A. I could not exactly say how it reads now. I tried to get one, but could not do it.

Q. Where did you try to get one?

A. From Mr. Bailey.

Q. Did you every try to get one from the Jackson Lumber Company?

A. No, sir.

Q. Who drew up the contracts for Krum, Barsoda and Albert?

A. Mr. Braswell drew up one and Mr. Bailey the other.

Q. Now, was there anything in these contracts that required these men to stay in the employ of the Jackson Lumber Company and be faithful in the performance of labor and work out the debts, including the costs?

A. Yes, sir; all expenses.

Cross-Examination.

By Counsel for Defendants:

It is understood between counsel and myself that exception shall be taken upon the same grounds as to the 328 other.

Q. The only conversation you ever had with either of these defendants was about the arrest of Krum and Barsoda?

A. No, sir.

Q. Was that the only conversation you had with either of these defendants about the arrest of anybody?

A. Yes, sir.

Q. That is the only conversation you had about the return of anybody?

A. Yes, sir.

Q. You had no understanding with any of these defendants to apprehend and arrest laborers and return them there?

A. No, sir; only when I got a warrant and then I served it.

Q. You have been around the camps frequently?

A. Yes, sir.

Q. About how many men altogether are there around those camps?

A. I do not know exactly. There are a good many out there—been out there to the camps.

Q. As many as eight hundred or one thousand in the various departments?

A. Might have been.

Q. Were they regarded as a lawless class of men?

A. I never have found them that way?

Q. I mean these laborers?

A. Pretty rough, some of them. I know they shot at me several times.

Q. Some of the laborers?

A. Yes, sir; negroes. If I had my coat here I could show you where they shot me through with a Winchester.

Counsel for Government objects.

329 Q. That conversation you had over the 'phone was in regard to one of these men?

A. Yes, sir; I believe it was in regard to Barsoda. He was at Slocum, Alabama, and I went down on the Central and got him.

Q. It is not an uncommon thing for you to have a warrant for the arrest of people for violating their contracts?

A. Lots of them.

Q. You have a great many?

A. Yes, sir.

Q. It is not unusual at all?

A. No, sir.

Q. Do you know whether Crum sent for any of these men to come over there or not, Albert?

A. Yes, sir; he told me to get Mr. Givens to come. I telephoned to Lockhart and they 'phoned out to Mr. Givens to come and get Albert and he refused to come.

Q. He wanted you to have Mr. Givens come?

A. Yes, sir.

Q. And he would not come?

A. No, sir; and then he wanted me to telephone for Mr. Gallagher to come.

Q. It was at his instance that Mr. Gallagher came down there?

A. Yes, sir.

Q. What was Mr. Givens' business?

A. He is in the mill business, I think.

Q. Do you know what he wanted Mr. Givens to come there for?

A. To get him out.

Q. He tried to get him to come first and he would not come and then he asked you to communicate with Mr. Gallagher to take him out?

330 A. Yes, sir.

Q. And you did so?

A. Yes, sir. I done all I could.

Q. Did you telephone over to Mr. Harlan that Krum wanted him to come over there and take him out?

A. Yes, sir.

Q. Was that done at the instance of Krum?

A. Yes, sir.

Q. Mr. Harlan, what he did he did at the request and instance of Krum, did he?

A. Yes, sir.

Q. And what Mr. Gallagher did he did at the request and instance of Albert?

A. Yes, sir.

Q. Didn't you see these fellows and tell them if they wanted to get out of jail you could get them out by calling these people there?

A. No. They asked me first to send for them.

Q. What did you say about having a lot of warrants in your pocket?

A. Warrants and other things.

Q. To pick up men for running away from accounts?

A. No.

Q. When you had that message from Mr. Harlan to go up to Slocum, Alabama, to bring back who?

A. Barsoda.

Q. Did you have any warrant then in your possession?

A. Yes, sir.

Q. Who made that affidavit?

331 A. Mr. Harlan.

Q. Was the warrant handed to you to go and get the man?

A. Yes, sir; the way our warrants and affidavits is altogether.

Q. When did you get that message from Lockhart?

A. I do not remember exactly, but I went a few days afterwards. The warrant and affidavit is altogether.

Q. Look at the affidavit on the other side; whose name is attached to it?

A. Mr. Harlan's.

Q. Who signed that first?

A. W. S. Harlan.

Q. There are two signatures, both signed by the same man?

A. I do not know. I got both the same.

Q. Ain't that your handwriting?

A. No, sir.

Q. Didn't you have instructions generally to sign affidavits, get warrants and pick up men any way you could?

A. No, sir.

Q. Look at that signature, W. S. Harlan, on top?

A. That is not my handwriting.

Q. Will you swear that is not your handwriting?

A. Yes, sir.

Q. Do you know whose signature, whose handwriting; you see the two names there—the same name written twice?

A. Yes, sir.

Q. Which one is Mr. Harlan's?

A. I do not know. I got the warrant just like it is.

332 Re-Cross Examination.

Q. You are the only deputy sheriff down there for that section of Alabama, are you?

A. Yes, sir.

Q. Were you before the grand jury?

A. Yes, sir.

Q. You testified substantially to the same facts there that you have testified to here?

A. I think so.

Thereupon JAMES JOHNSON was re-called as a witness and testified as follows, on behalf of the defense:

Cross-Examination.

Q. Do you know whether either one of these men, Crum or Albert, went for Mr. Givens to come up there or not?

A. The deputy sheriff told me that.

Q. You testified to the same facts before the grand jury that you testified to here, didn't you?

A. I think I did, as near as I could. I may not have used the same language.

Q. You had the names of the contracts and the names of the parties the same as you had them here?

A. Yes, sir.

Q. You stated the names of them the same?

A. Yes, sir.

Q. State whether or not that is the statute of the State of Alabama under which you proceeded; is that the section? 333

(Handing witness book.)

A. Yes, sir.

Q. What section is that?

A. Section fifty-five ten.

Q. Of the Criminal Code of Alabama?

A. Yes, sir.

Re-Direct Examination.

Q. Do you know the handwriting of Mr. Moneke; have you ever seen him write?

A. Yes, sir.

Q. You have noticed his—

Counsel for defendants submit that the Government cannot impeach its own witness.

The Court:

That depends upon the circumstances, manner and character of the witness.

Defendants' Counsel:

Is this under the general rule?

The Court:

I am aware of the general rule, but this is an exception to the general rule.

Defendants' Counsel:

I would like to ask the Court if it has ever seen any rule of law which would permit, no matter what the character or bearing of the witness was when not testifying to some affirmative matter against the Government the Government cannot, under any rule anywhere, in any book to be found in any library—I challenge anybody to show authority where he can be contradicted—

The Court thinks this witness comes under that exception. I do not want to comment upon any length upon that witness, but want to hear as little as I can about him, but I think he is subject to that exception.

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Exception noted to the ruling of the Court.

Q. I will ask you the simple question, to look at that and see if you recognize that as Mr. Monekey's handwriting? The name is signed twice. I refer to the top signature. I want to ask you another question. Have you not seen this man often and often as an officer of your court?

A. Yes, sir. I do not remember who did sign this here, but whoever it was come in and said they would make the affidavit—said Mr. Harlan had 'phoned to make the affidavit—

Q. The party that came in and put his—the first signature there?

A. That is the first signature

Q. That party said—

A. I do not remember who it was, whether it was Moneke or some other gentleman.

Q. And whoever it was said that Mr. Harlan had 'phoned him his authority?

A. To make the affidavit and get the warrant.

Q. You do not think that resembles the handwriting of Mr. Moneke?

A. I could not say that Mr. Moneke done that.

Q. Nor that he did not do it?

A. I could not say that he did it. I am not certain. He may have done it, though. I know whoever it was made the afiidavit and signed Mr. Harlan's name, but I do not remember who it was, and then the next day when we go to trial with this case Mr. Wiggins was representing the Barsoda and he objected to that signature, said Mr. Harlan had not signed it and then Mr. Harlan signed it himself.

Q. Do you know whether Mr. Moneke was present when the objection was made? 335

A. No, sir; I do not remember, but I guess he was thereabouts.

Q. Was anything said by him, Mr. Moneke, at that time, when objection was made by Mr. Wiggins?

Counsel for defendants object.

Thereupon the Government called as a witness one B. H. THOMAS, who, having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?

A. B. H. Thomas.

Q. What is your occupation?

A. Managing editor of the Pensacola Journal.

Q. Were you such in July of this year?

A. Yes, sir.

Q. Did you know of your own knowledge whether there was some articles that appeared in the Journal in relation to the conditions and reports of conditions at the Gallagher lumber camps of the Jackson Lumber Company?

A. There were a number of such articles.

Q. Was there any correspondence from the Jackson Lumber Company in relation to these articles that appeared in that paper?

A. Yes, sir.

Q. Have you the articles there?

336 A. I have the articles in these files here yes, sir. Which one do you refer to.

Q. The one that this letter relates to. Examine that letter (handing witness letter).

A. That letter was published in the Journal the morning of July 26th, 1906, the letter I hold in my hand dated Lockhart July 24th.

Q. Prior to the publication of that letter were there some articles in the paper in relation to the Jackson Lumber Company, their labor and the escape of labor?

A. Yes, sir; but I do not remember the dates.

Q. It was sometime—some two or three days before the date of this communication?

A. Yes, sir.

Q. Did you receive a letter from the Jackson Lumber Company of date July 24th, 1906, in the post office?

A. Yes, sir.

Q. Do you know whose name that letter bore?

A. It was signed by W. S. Harlan.

Q. You say you received this letter from the post office?

A. I did.

Q. What did you do with it?

A. I opened it and read it.

Q. Was it published in the Journal?

A. Yes, sir.

Q. You identify that letter as the one received from the Jackson Lumber Company by you out of the post office—taken out of the post office (handing witness letter.)

A. That is the letter.

Q. Was that letter in relation to certain articles that had appeared in the Journal.

337 A. It is.

Government thereupon offered the letter dated July 24th, 1906, signed by W. S. Harlan in evidence.

Counsel for defendants object to such introduction upon the ground that it is immaterial and irrelevant and so far as the defendants here on trial are concerned. The Jackson Lumber Company is not upon trial. And upon the further ground that it has not been shown that the letter was signed by any one of the defendants. And upon the further ground for all of the defendants except the defendant W. S. Harlan, because it has no binding force upon them.

Government's Counsel:

To obviate one objection we will call Mr. Satterwhite.

Thereupon the witness, Thomas, was excused, and the witness SATTERWHITE called, and having been duly sworn, testified as follows:

Direct Examination.

Q. You have been sworn?
A. Yes, sir.
Q. Were you in the office of the Jackson Lumber Company about July 24th, 1906, at Lockhart?
A. Yes, sir.
Q. Were you pretty well acquainted with the office, where the secretary or where the correspondence of the Jackson Lumber Company was done?
A. Yes, sir.
Q. Do you know whether Mr. Harlan used an autogrpah or stencil autograph for signing letters?
338 A. Well, I know that he has got a stamp there. I do not know whether he uses it or not.
Q. Have you seen correspondence signed by such stamp?
A. I cannot say that I have ever seen him sign a letter with the stamp.
Q. Have you seen his business letters signed with that stamp?
A. I think I have.
Q. Are you familiar with the handwriting of Mr. Harlan?
A. Yes, sir.
Q. Is that a fac-simile of his signature (exhibiting to the witness letter?)
A. Yes, sir.

Government again makes offer of letter in evidence.

By Defendants' Counsel:
Q. This signature here is not written on there by Mr. Harlan, was it?
A. No, sir; that is a stamp.
Q. Where does that stamp usually lay?
A. In Mr. Harlan's office, that is the only place I ever saw it.
Q. Do other people affix that signature to communications besides Mr. Harlan?
A. Never saw it except by him.
Q. Have you ever seen him use it?

A. Only one time.

Q. Do other people stay in the office and about there?

A. He has a stenographer in his office.

Q. Do other people have access to the office?

A. They go in there and out.

339 Q. Where have you ever seen the rubber stamp laying?

A. In the drawer in his desk one time.

Q. Was he using it at the time?

A. No, sir.

Q. Who was using it?

A. It was laying in there.

Q. What were you doing—

A. I went in there to get a match to light a cigar one day and pulled the drawer out and saw the stamp laying there.

Q. How often did you go in his office?

A. Whenever I had business in there.

Q. How often would that be?

A. Sometimes once a day, sometimes may be twenty-five times, sometimes not at all. I was in there at least once or twice every day of the world.

Q. Do you know whether you were in there on the 24th day of July?

A. I could not possibly say.

Thereupon B. H. THOMAS was re-called and testified as follows:

Cross-Examination.

Q. Is this letter just like you received it from the post office?

A. I changed some of the arrangement. All the typewriting here is the same. I glanced over it just a paragraph.

340 Thereupon MR. SATTERWHITE was re-called and testified as follows:

Direct Examination.

Q. Were you familiar with the stationery used by the Jackson Lumber Company in July?

A. Yes, sir.

Q. Is that the ordinary stationery used by them (exhibiting to witness letter?)

A. Yes, that is it exactly.

Cross-Examination.

Q. Various people use that stationery working for the Jackson Lumber Company, don't they?

A. Yes, sir.

Q. Anybody and everybody use it?

A. Not any and everybody.

Q. You use that kind, don't you?

A. Yes, when I was working in the office.

Q. And other departments use it?

A. Yes, sir.

Re-Direct Examination.

Q. Did you ever use that stamp?

A. No, sir; I did not have any occasion to do so.

Counsel for defendants also object to the introduction of the letter because it appears to be a part of a record 341 in another case. Objections overruled and exception noted.

Thereupon the letter was read to the jury as follows:

"Capital $1,800,000. Annual Capacity 80,000,000 Feet.
Jackson Lumber Company,
Manufacturers of Long Leaf Yellow Pine Lumber.
Rift Sawn Flooring a Specialty.
J. W. Watzek, Prest. W. S. Harlan, Manager.
E. E. Jackson, 1st V. Prest.
E. S. Crossett, 2nd V. Prest.
C. W. Gates, Treasur., Lockhart, Ala., July 24, 1906.
Jno. B. Rider, Secy

Editor of the Pensacola Journal,
Pensacola, Fla.

Dear sir:

I have carefully read your two-column article of "Harrowing Tales of Inhumanity and Cruelty to Foreigners" in our logging camps. I am indeed surprised at a paper of your standing, writing anything of this kind, until you fully investigate the case. Probably it is "news" that you want, but you had better satisfy yourself and give the public a true statement of your case.

We would respectfully ask that you send some competent representative to our plant and woods to investigate for your own satisfaction and see if you find the matters as represented by the irresponsible tramps that have passed through your place, who do not and would not work for any one, if they
had the opportunity.

342 All the men that hired to us in New York,
signed contracts and fully understood everything, and we are carrying out our part of the contract to the letter.

Some of the men who came were of the no-account class whot ried to get away before they left New York, merely working for the New York agents so that they would get their employment fee. These men kept trying to escape after they were here.

There has been fifteen or twenty out of some two hundred that have left us. We have detained no one against their will or contract.

I think the most satisfactory way to get at the true inwardness of the case, is, for your representative to investigate it fully.

From the reading of your article, if it would be circulated in the Northern papers, they would think that we were in the "throes of reconstruction days."

Inasmuch as we have from one thousand to twelve hundred men in our employ; many of whom have been with us for years, we work no convicts. Our scale of wages are as high as any mills in this territory. The location and accommodation of our employees are as good as any mills in the South.

This ought to be sufficient evidence that we are not the inhuman wretches that your article pictures us.

Very respectfully,

W. S. HARLAN.

WSH-F."

343 Thereupon the Government called as a witness one WILLIAM ALBERT, who, having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?
A. William Albert.
Q. You are a German?
A. I am a Frenchman; don't understand much English.
Q. Where were you born? Where have you lived most of your life?
A. I live at Florala.
Q. Did you ever live in Canada?
A. Yes, sir; raised there.
Q. Where did you come from when you went to work at Florala?
A. From Wisconsin.
Q. When did you come down and commence to work for them?
A. Start to work for them the fourth of July.
Q. Do you know Mr. Gallagher?
A. Yes, sir.
Q. Do you know Dr. Grace?
A. Yes, sir.
Q Do you know Big Harry?
A. Yes, sir.
Q. Do you know Archie Bellinger?
A. Yes, sir.
Q. Do you see them all there?
A. Yes, sir.
Q. Were you in Florala sometime about the middle of July—about the 15th to the 16th of July?
A. I was there around June, sometime around June. I was there around the camp two weeks. I was stopping at the house—at the turpentine quarters of the Jackson
344 Lumber Company, but I was not working for them at the time, but I was around there.
Q. Do you remember being in jail in Florala in July?
A. Yes, sir.
Q. Do you remember what time in July?
A. I could not tell you what day.
Q. Do you know Mr. Moneke?
A. Yes, sir.
Q. What is he, do you know?

A. He is marshal.

Q. He is an officer?

A. I do not know what he is; he is the man what put me in.

Q. Do you know Judge James Johnson?

A. Yes, sir.

Q. Were you in jail at Florala sometime in July?

A. Yes, sir.

Q. Who took you out of jail?

A. Mr. Bob Gallagher took me out himself.

Q. The gentleman here?

A. Yes, sir.

Q. Did you send for Bob Gallagher to come and take you out of jail?

A. No.

Q. State what conversation occurred between you and Gallagher who was present, about where, was Moneke present when you had the talk with Gallagher.

A. Yes, sir; he was there standing outside when me and Mr. Gallagher had the talk. That was the time he took me out of jail.

Q. State as well as you remember the conversation that took place between you and Gallagher about what you would do in Court and where you would go to work and
345 for what?

A. I go there and sign contract—I remember he give me ten dollars. I was arrested for nineteen dollars and I went up there—after he give me the ten dollars and I went up there and said to him—I don't remember anything I said to him about going to work for him—only thing I remember up to the camp I asked him if I could get any money from him and he says yes, and I told him I had money, and I told him I was going to work for him and I broke my promise—I did not go to work for him and I went back to old man Givens—

Q. What was this conversation about?

A. When I got arrested there was some other bill besides that and Mr. Pentton there that keeps a saloon claimed I owed him eighteen dollars. I was satisfied that I owed him that. He give me half in money and the other half in trade—I am satisfied I got that money—the only thing I cannot remember that I got nineteen dollars from Bob because I swear I got ten dollars—I took his word for it for he might have give it to me. I was drunk at the time and don't remember. Somebody told me he give it to me. He give me a check for the other. I cannot swear nothing nor see nothing—

Q. You admit that you owed him ten dollars?

A. Yes, sir.

Q. State what was said to you about going to Court and what you would do and if you did it you could go back and work it out—

Thereupon counsel for defendants objected to the question as leading.

Q. Mr. Gallagher came down to Florala, did he, after you were in jail?

A. Yes, sir.

346 Q. And Mr. Moneke took you out of jail and carried you to a buggy where Mr. Gallagher was?

A. He was standing about twenty-five feet of the buggy when he took me out of jail.

Q. Tell us what conversation occurred there and the agreement you made between yourself and Mr. Gallagher?

A. They took me out of jail and I went there and the marshal and I walked away towards the court house. Mr. Gallagher was standing there and as I went by he said good morning, and he called me over and asked me if I had the money to give it to him and I told him no, and he says go borrow it from Bud Givens, and I said no, because I cannot see him myself. Well, he told me, Mr. Moneke was standing alongside of us—I am going to tell the truth and nothing else, and Mr. Gallagher called me to the buggy and says you got that money to give to me—he said to me that right straight if he need me to go up to work for him and he says can you get the money from Givens, and I says no, I can get it if I see him myself, and can talk to him, and he says to me like that, what are you going to do. I says I don't care what I am going to do. I am going to plead guilty, and he says I ain't got time to fool with that and if you don't go and plead guilty you will have to go to Andalusia and it will cost you more money and I ain't got time to fool with it—

By Counsel for Defendants:

Who was it saying that?

A. Mr. Gallagher, he says to me I cannot fool with that and asked me if I was going to do it, and I did not know what to do—what he asked me to do or go to jail. All I had to do

—I didn't have no money to pay with, and I did not
347 know what to do, so I went up there and and they
asked me to go up there, and says plead guilty and
I will be responsible for all what you owe. So I did, I was satisfied to go up there. I walked up there and went to the court house and told Judge Johnson—I went in there provided I sign a contract to work it out. He called me in and asked if he knows me and he says, yes, I know him—

Q. You entered into a contract in Judge Johnson's Court?

A. Yes, sir.

Q. How much did they put in the contract?

A. Eighteen dollars for Penton and seven dollars for Sweeney and nineteen dollars for Bob and I don't remember that I got more than ten dollars; I remember that, and he might have given me all of it—

Q. Who paid that?

A. Mr. Gallagher paid it.

Q. Did you sign a contract; did you make your mark to a paper?

A. They wrote the contract for me and asked me if I could sign it and I told them no, I could not write my own name you put my name down and I touch the pen—

Q. That was for fifty odd dollars, was it?

A. The contract was for fifty-one dollar and there was a dollar for the doctor when I was in jail I was sick.

Q. This contract included the doctor's bill, and you say part of it was for a bar bill?

A. Yes, sir.

Q. What was your contract; what did it call for from you? Were you to go back to the company; who were you to work for?

348 A. I signed the contract to go back there and work it out.

Q. Back where?

A. Up to the Jackson Lumber Company.

Q. Did you go back?

A. Yes, sir I went back with Mr. Bob. Before I signed the contract I said to let Mr. Bud Givens know my trouble and he said he would to-day or to-morrow; if I don't write to him to-day I will tomorrow. I told him that myself.

Q. That was to get Bud Givens to pay the debt?

A. I don't know, but to let him know where I was because the paper was made to come and get me on Monday, and you know yourself if I did not try to run away I get arrested. I met the marshal between the depot and Penton's saloon, and then he took me over to Penton's saloon and I saw Mr. Bob there. Mr. Gallagher himself said to hold me there and he came back; well, he went up and bring the paper, and had me arrested, and when he was up there I went in there and buy a drink myself, and then he come and she me the paper, and told me I was arrested, and I followed him right down to the jail.

Q. Who was with Mr. Gallagher that day when you went back to Lockhart to work?

A. I know very well me and him and Dr. Grace. When we get there Dr. Grace got off there and Mr. Gallagher told me to hold the horse. I did not get out of the buggy.

Q. Where did you go?

A. Went to the log camp; Mr. Gallagher says take care of that horse.

Q. That was the same day you signed the contract?

A. Yes, sir.

349 Q. Right after you signed the contract?

A. Yes, sir.

Cross-Examination.

Q. You went to Florala about the fourth day of last July?

A. Last year took me out there and started to work on the fourth day of July.

Q. For whom?

A. Jackson Lumber Company, picking up logs around the mill.

Q. You worked there how long?

A. Four months something around there and quit them.

Q. Where did you go then?

A. To Paxton and worked ten days and then went to Falco and worked seven months for Bud Givens.

Q. You were working for Bud Givens when you were arrested at Florala?

A. Yes, sir.

Q. You were one of his employes and went to Florala and got arrested?

A. I cannot talk much English and if I don't understand the question I won't answer.

Q. You went up to Florala while you were in the employ of Mr. Bud Givens and the marshal arrested you; is that right?

A. I don't understand.

Q. I say when you were working for Mr. Bud Givens you got off and went up to Florala and got arrested?

A. I went off on Saturday night to be back on Sunday morning.

Q. And got drunk?

A. No, sir; I got arrested on Saturday night.

350 Q. How did you get in jail?

A. Because the paper was made to come after me on Monday and they arrested me on Saturday night.

Q. They put you in jail?

A. Yes, sir; after the train time.

Q. Did you try to let Mr. Givens know where you were?

A. Yes, sir; I told the marshal to phone to Mr. Givens and let him know my trouble and come and take me out.

Q. You told the marshal; who is the marshal?

A. Mr. Moneke, to phone to Mr. Givens to come and try and get me out.

Q. Did he get Mr. Givens?

A. No, he did not come.

Q. Then did you send for anybody else?

A. No, sir.

Q. Didn't you send for Mr. Gallagher?

A. Not at that time. I said the other time I was arrested for being drunk and that time I did not send for him.

Q. How many times were you arrested in all?

A. I could not tell you right now. Several times. I was working at the time and that is the time he pay me up and when I was working for the company.

Q. Lots of times you would go down there and get arrested and he would go down there and get you out of there, would he?

A. Yes, sir; not that time; that was last year and this year, too.

Q. But a great many other times, not this time, you would get in there and he would go down and pay you out?

A. Yes, sir. I was working for him at the time.

Q. He paid your fine a good many times?

A. Yes, sir; and I was working for him.

351 Q. Finally he declined to pay and let you work on the street?

A. When I quit him this year I worked on the street for quite a while. I was fifteen days and when he come up to pay me out he says Frenchy, he says would you like to get out and I says no, no use for him to pay me out and he says, he offered to pay me out and I did not want him to pay me out; that was after I quit him this year.

Q. You went out to the company when you first went there and applied to them for labor for work?

A. Sure, because they took me from my country.

Q. And when you got ready to quit you quit, did you?

A. Yes, sir; when I quit last year Mr. Bob himself—I tell you the way I quit last year—

Q. After working for them you did quit voluntarily, did you?

A. Yes, sir.

Q. And you went to Paxton and worked there voluntarily?

A. Ten days, and then I went to Falco and worked seven months and my foreman is right here. I done said what I knowed and I ain't here to tell no lie and I done said what I know and what I have and it ain't no use to ask me any more questions.

Q. Well, why don't you stop? I am not asking you any questions. You were sick quite a while around Florala?

A. Yes, sir.

Q. Who took care of you?

A. The Jackson Lumber Company. I was in the hospital thirty-five days.

Q. Mr. Gallagher furnished you about thirty-five dollars, didn't he?

A. I don't know. We paid the doctor and insurance. I don't know if he furnished me any money or not. I know I was there.

352 Q. Then when you got up and left from there he discharged you?

A. Mr. Bob told me himself and says I can go up to camp; you won't be able to work for a couple of weeks; you can come up to camp and stay around there and it won't cost you a cent and at the same time he give me fifty cents. He give me fifty cents and told me to go around to the camp, and he says I know you can't work for a couple of weeks, and he says I ain't going to charge you a cent and you won't be so amongst strangers and lonesome—

Q. And you did lie around there quite a while?

A. I stayed around there and went to work in the woods and tried three times and I could not do it, because I was not strong enough and the last time I went there and tried I quit, I come here to the camp and I was so tore up and I told Mr. Bob and he says what's the matter with you? and I says I am sick, I have got the cramps in my stomache, I want you to take me down to Lockhart and he thought that I was not strong enough to go and he phoned to the doctor and the doctor come up there and give me some medicine and told Bob what was wrong and said I started to work too quick and I done tried three times. I will give Bob credit for that.

Q. He treated you all right, did he?

A. I cannot say anything about that; he treated me all right.

Q. And when you were not able to work he did not make you work, did he?

A. No, sir.

Q. And he let you lie around there and gave you money from time to time?

353 A. Every time I asked him for money.

Q. And he took you out of jail from time to time?

A. Yes, sir.

Q. And let you go when you could not work down there?

A. Yes, sir.

Q. He did not make you sign that contract, did he?

A. They was sitting alongside of me and wrote the contract and read it to me and I was satisfied to sign provided if he left old man Bud know my trouble and after the contract was ready he asked me to write my name, and I told him I could not do it. I told Mr. Gallagher, he was sitting alongside—

Q. You had no objection to signing it?

A. I signed it because I had to sign it because if I would not sign it I would not go up there at all.

Q. Did you sign it voluntarily; did anybody make you sign it?

A. They made me sign it that way. I had either to sign and go to work for what I owed—

Q. That was the same proceeding in Court—you went back with him voluntarily?

A. With him in his own buggy, and I did not work that day, but worked the next day.

Q. Did you then go back and get in jail at Florala?

A. I did.

Q. Then did you send for him to take you out again?

A. Yes, sir; and he took me out, too.

Q. Then you finally got in and he refused to take you out and you went to Paxton?

A. No, sir; that ain't the time at all. The time he refused to take me out is the time I quit him. That is another time altogether.

354 Q. Then you quit him?

A. Yes, sir; and if you want to know the reason why I quit him I will tell you.

Q. That is all.

Re-Direct Examination.

Q. Was something said about going to Andalusia when you were talking about the contract?

A. Gallagher said he did not have time to fool with that any longer—he had been there three times to wait for Bud Givens and Mr. Bud Givens did not come and he did not have time to see about it any more.

Q. How long would you have had to stay at Andalusia?

A. I do not know; he asked me for money and I told him I did not have it.

Q. Did they tell you what you had to go to Andalusia for?

A. I guess if I did not have the money I would have to go there and wait for the second court.

Thereupon the Government called as a witness one BUD GIVENS, who having been duly sworn, testified as follows, to-wit:

Direct Examination.

Q. What is your name?

A. Bud Givens.

355 Q. Where do you live?

A. Laurel Hill.

Q. What is your business?

A. Manager of the Florala and Alabama Land Company.

Q. Were you there in business last July?

A. Yes, sir.

Q. Do you know Mr. Harlan?

A. Yes, sir.

Q. Did you meet Mr. Harlan any time in July last in Florala?

A. Yes, sir.

Q. While changing cars there?

A. Yes, sir; I was in front of the livery stable there when I met him.

Q. What was said between you about a man?

A. Mr. Harlan told me, he says we have got one of your en out at my camp, and if you will pay either fifty of fifty-our dollars you can get him or take him.

Q. Had one of your men and if you would pay fifty or fty-four dollars you could have him?

A. Fifty or fifty-four dollars.

Q. Do you know Mr. Gallagher?

A. No, sir.

Q. Did you receive any communication from Mr. Gal- gher shortly after this conversation?

A. When I returned back there was a letter for me.

Q. From whom?

A. Mr. Gallagher.

(Letter here exhibited to witness.)

Q. Is that the envelope from which that letter came?

A. Yes, sir.

56 Q. To whom is that envelope addressed?

A. Addressed to Bud Givens.

Q. Is there any postmark on it?

A. Yes, sir.

Q. Can you read it?

A. Lockhart.

Q. Is there anything on the corner of that envelope—etterhead or advertisement?

A. After five days return to R. Gallagher.

Q. Where is his address?

A. Lockhart.

Q. You received that letter from the postoffice?

A. This was on my desk in the office.

Q. In that envelope?

A. Yes, sir.

Letter here offered in evidence and read to the jury as ollows:

Lockhart, Ala., 7-25-'06.

Ir. Bud Givens:

Dear Sir—I had this man William Albert arrested on Sat-rday night. He worked me out of nineteen dollars. Dick enton for eighteen dollars and H. Sweeney seven dollars—r forty-four dollars in all. I paid the costs and the whole ill, which amounts to fifty-two dollars. He signed a contract to work for me but as I really don't need him and should you want him at any time I will release him any time that I get my money. It is not my intention to hire any of your men or entice them to leave your employment at any time, and any time any of them come over here owing 357 you anything or that you want them for anything if you will let me know I will be perfectly willing to assist you in any way.

Very respectfully, ROBT. GALLAGHER."

Q. Did you reply to that letter?

A. No, sir.

Q. You have had no conversation with Mr. Gallagher about that since?

A. No, sir.

Cross Examination.

Q. Is it customary not to entice other men's employes away from them, is it not?

A. Yes, sir; I think it is customary not to get each other employes.

Counsel for the Government did then and there object to the question and answer, and thereupon the Court did sustain such objection as follows:

The Court:

The value of this letter as a piece of evidence is the condition upon which the man would be released, to-wit, the payment of money which he owed to Gallagher, the writer of the letter; that is the only reason why the letter is valuable in the case. That goes to the jury for what it is worth. Now it is not sought to ask this witness if he knows of a custom by which men are held to labor unless the man that owed them before will come in and pay the amount of money that the holder holds against them. That is not the question. 358 The question is another question and goes wide of the letter, and therefore is not admissible. If it could the letter would be subject to the objection that it would be contrary to law to do that, but the question is is it customary for men to employ each other's laborers. That cuts no figure in this case one way or the other. There is no man charged with taking another man's labor. The charge here is that he held him because the man owed the holder a debt—

that is the charge—that is the only charge—returning him to it or arresting him for the purpose of holding him in that condition. The Court thinks the objection is well taken.

To which ruling of the Court the defendants' counsel did then and there object.

The Court:

I want to add that it is not what this man has done nor what he would do or would not do—that is not in the case at all. If he would commit peonage, of course it would not be admissible to show that.

Q. Is it not a custom among mill men and turpentine operators not to employ employes of another concern when those employes are indebted, without first paying what they owe?

To which question the Government's counsel did then and there object, which objection was sustained by the Court.

To which ruling of the Court the defendants' counsel did then and there except.

Q. Was there or not an understanding between your concern and the Jackson Lumber Company that they would not employ each other's employes when those employes had abandoned the service of the other while indebted to them without first paying off that indebtedness?

359 To which question the Government's counsel did then and there object, which objection was then and there sustained.

To which ruling of the Court the defendants' counsel did then and there except.

Q. Was it anything unusual, the communication at this time to notify a man that he had one of his employes and that if the amount he owed there was paid he might take him?

To which question the counsel for the Government did then and there object.

Which objection was sustained by the Court.

To which ruling of the Court the defendants' counsel did then and there except.

Q. This man Albert had been at work for you before that had he?
A. Yes, sir.
Q. How long had he been at work?
A. About six months.
Q. Did you know him to be in jail in Florala?

To which question the Government's counsel did then and there object, which objection was overruled.

A. I paid a fine of ten dollars.
Q. The time that he was placed in jail when Mr. Gallagher took him out, did you know that he was in jail then?
A. They wired me from there that he was in jail and to come up and take him out.
Q. Did you go?
A. No, sir.
Q. Why?

To which question the Government's counsel objected, which objection was sustained.

To which ruling of the Court the defendants' counsel did then and there except.

360 The Court:
That is going further than there is any justification in the case. The Court would add that it is of no consequence whether the man was good or bad or not, whether he got tired of him or did not want him any longer, or did not want him at all—whether anybody did not want him. The Court is unable to see any relevancy that these matters have.

Counsel for Defendants:
I suppose the Court's views—

The Court:
Is there anything before the Court?

Defendants' Counsel:
In view of the Court's suggestion, I want to ask a few more questions.

The Court:
Well, ask the questions, and if I do not like it I will pass on it.

Q. I will ask the question direct, then. What kind of a man was this Albert?

To which question the counsel for the Government did then and there object.

Which objection was then and there sustained as follows by the Court:

Suppose he was not here, suppose he had both legs off and both arms off, to take an extreme case, would it not be admissible to show why anybody wanted to hold such a man in peonage. The Court thinks it is not a question as to what a man would want to do, but what he did do. I will sustain the objection.

To which ruling of the Court the defendants' counsel did then and there except.

The Court:
I do not think that kind of testimony is admissible against a written letter of that kind.

361 Thereupon the defendants' counsel recalled WILLIAM ALBERT, who testified as follows:

Cross Examination.

Q. Did you or not represent to Mr. Gallagher that Mr. Givens owed you some money and if he would pay you the amount which he did pay you that you would have Mr. Givens to pay him?

A. I says I don't know nothing about it.

Q. Did you tell him that Mr. Givens owed you some money?

To which question the counsel for the Government did then and there object, which objection was overruled by the Court.

A. Yes, sir; I told him I did not know, but I thought he did.

Q. That Mr. Givens owed you and if he would pay that amount—

A. I don't know anything about that at all. I did not say Mr. Givens would be responsible for it. That is another question altogether.

Q. Didn't you tell him that Mr. Givens owed you sixty-five dollars—that you had paid him fifteen dollars and that Mr. Givens still owed you fifty dollars?

A. I asked him to lend me fifteen dollars right in his office, and I told him that I was going to go to work for him and I had no settlement there and had money coming to me—that is the way.

Q. You represented that to him as a fact, didn't you?

A. I told him I was going to go to work.

Q. Now, let us get back to the other fact. Didn't you state that Mr. Givens owed you something—some money?

A. Yes, sir.

Q. You stated that as a fact?

A. I told him I did'nt have no settlement and I thought I had some money there and I had draw the next time after Mr. Givens went there—wrote a check and give me
362 a check for fifteen dollars in Florala. I saw Mr.
Givens after I got the money from Bob. I met him and I says, can I get some money from you, and he says how much you want, and took me over to one of the saloons there and wrote a check and give me check and I went in and cashed it.

Q. That is the fifteen dollars?

A. I got that from Bud Givens—not from Bob.

Q. Now, then, you claimed that he owed you fifty more?

A. I did not say such a thing as that.

Q. Didn't you claim that he owed you something after paying you that fifteen dollars?

A. Nothing of the kind said about that.

Q. You did not tell Mr. Gallagher that Mr. Givens owed you anything?

A. I said Bob, will you lend me fifteen dollars. He says yes, and I says I am going to work. I broke my promise and he says you wait until I come back and he broke his promise and did not come back, and I saw him in Florala and that is when I got the ten dollars.

Q. Didn't you tell Mr. Gallagher that Mr. Givens owed you something and that if he would let you have that money—

A. I told him if he would let me have the fifteen dollars I would go to work.

Q. You did not say anything about Mr. Givens—

A. I told him I did not have no settlement with Mr. Givens and I had some money down there.

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Re-Direct Examination.

Q. You told him you had not had any settlement?

A. No settlement with Bud Givens.

Q. And you thought you had some money?

A. That is what I said.

Q. You did not tell him for certain that you had any money there?

Thereupon Mr. BUD GIVENS was recalled to the witness stand on behalf of the defendants and testified as follows:

Cross Examination.

Q. Did you owe Albert anything when he left you?

A. No, sir. He owed me forty-six dollars and twenty cents.

Re-Direct Examination.

Q. Was the debt of yours put into this account that was signed by Albert with Gallagher to pay out an indebtedness?

A. No, sir.

Thereupon the Government called as a witness one ALEXANDER NORMAN, who having been duly sworn, testified as follows:

364 Direct Examination.

Q. What is your name?
A. Alexander Norman.
Q. What nationality are you?
A. German.
Q. Where are you living at the present time?
A. In Pensacola.
Q. Are you working at any place now?
A. Yes, sir.
Q. Where?
A. Navy yard.
Q. Where did you work or stay last July, this last July?
A. July 23rd I came to Lockhart and stay there four months.
Q. Did you stay around the office or Lockhart proper or at the camps?
A. Lockhart proper.
Q. What did you do; what was your business there?
A. I was first time mule worker and after I got hotel keeper.
Q. Do you know where Mr. Harlan lives?
A. Yes, sir.
Q. Where is his house at Lockhart?
A. I don't know the avenues, name, it is a big house, best house, nicest house in Lockhart.
Q. Do you know whether there are any big dogs kept there?
A. Yes, sir; behind his house is a big yard and inclosed with two high fences—I think sixteen to twenty feet high, and the fences are locked and inclosed from the first fence I saw three small dogs and inclosed in the second fence two dogs—big dogs, and inside the second fence big dog house.
Q. Do you know the difference in the kind of
365 dogs? Were they big dogs, fierce looking dogs?
A. Two big ones and three small ones; the two big ones was one black and one yellow and the small ones two black and one yellow.
Q. Did you ever have an opportunity to see these dogs—go and look at them?
A. I see just the dogs in the yard.

Q. Did you go in with anybody into this yard?

A. I go with John, who attended the dogs, Mr. Wise, two times. He attended the dogs.

Q. Where was this fence and dog house with reference to Mr. Harlan's house? That fine, nice house?

A. Just behind Mr. Harlan's house is that yard and inside the fence, the second fence, is the big house, dog house.

Q. What color were these small dogs?

A. Two black and one yellow.

Q. What kind of dogs were they?

A. The man who attended the dogs say they are bloodhounds.

Q. Do you know what the other kind of dogs were there, except the bloodhounds?

A. No, sir.

Q. Were there no bulldogs there?

A. I know just the butcher; he got him five or six fox hounds.

Cross Examination.

Q. Where did you come from when you came to Lockhart?

366 A. From New York.

Q. Where did you come from when you came to New York.

A. Germany.

Q. Did anybody go down with you when you came from New York to Lockhart?

A. Yes, sir.

Q. Are you a married man or a single man?

A. Married man.

Q. Is your wife here?

A. Yes, sir.

Q. How long have you been married?

A. One year and a half.

Q. Where were you married?

A. New York.

Q. Whom did you marry?

A. My wife name is Mary Norman.

Q. What was her name before she married?

A. Mary Commack.

Q. Had she been married before?

A. Yes, sir.

Q. Is her husband living or dead?

A. Living—I do not know.
Q. He was alive the last time you knew of him?
A. I do not know.
Q. Where were you married. By whom?
A. New York.
Q. By whom?
A. Mr. Sheppard, do I have to answer that?
Q. You prefer not to state?
A. I do not want to state.

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Counsel for the Government object to line of questioning.

The Court:

The Court does not think it cuts any figure at all in this case. It can have but one purpose and that is not a legitimate one in the mind of the Court.

Q. What are your feelings towards Mr. Harlan?
A. I don't understand.
Q. What are your feelings towards Mr. Harlan?
A. I cannot feel good and cannot feel bad to him.
Q. Who took you into see those dogs, Mr. Wise?
A. Mr. Wise.
Q. Did he have charge of them?
A. He attended the dogs.

Thereupon the Government's counsel announced that the Government rested its case.

Thereupon the counsel for the defendants announced that the counsel on behalf of the Government admitted that John Smith and William Keller testified to substantially the same facts on this trial, that they did on the last trial and before the grand jury.

Thereupon counsel for the defendants moved the Court for an affirmative charge on the ground that here existed a variance between the proof and the indictment.

Which motion the Court did then and there overrule, an defendants' counsel did then and there except to the rulin of the Court.

368 Thereupon the defendants called as a witness one **FRANK HALL**, who having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?
A. Frank Hall.
Q. Where have you been employed during the last year?
A. For the Jackson Lumber Company.
Q. When did you enter their employment?
A. The tenth day of January of this year.
Q. At what camp were you employed?
A. Logging camp.
Q. What were your duties at the logging camp?
A. Working in the log boom rolling down logs.
Q. Where did you sleep and eat?
A. In the cars.
Q. State to the jury how the accommodations were at that camp?

Thereupon the counsel for the Government objected to the question upon the ground that it was not relevant, as that issue was not on trial in the case. Which objection was then and there sustained by the Court.

To which ruling of the Court the defendants' counsel did then and there object.

Q. You slept in the cars, did you?
A. Yes, sir.
Q. Do you know whether there was a watchman at that camp?
A. Yes, sir.
Q. What was his name?
A. Louis May.
Q. What were his duties?
A. To fire up the engines in the morning and have them ready to go to work.
369 Q. Did you sleep with the other men or not?
A. Yes, sir.
Q. Will you state whether or not this watchman's duty was to guard the men in the cars at night?
A. No, sir.
Q. Did you ever see him while there guarding any men?

A. No, sir.

Q. During the month of July or any other time?

A. No, sir.

Q. Did you ever see anybody else placed on duty there to guard any of the men in July or in any other month?

A. No, sir.

Q. As a matter of fact, do you know whether the men at night time had liberty or not?

A. They had it as far as I know.

Q. In what way did they have liberty?

A. They could go wherever they pleased.

Q. How far could they go from the camps?

A. Wherever they pleased; I always could and the others could, too.

Q. Can you name some of the places where they went?

A. They would go down to Lockhart and Florala.

Q. Do you know of any restrictions being placed on any of the men at that camp at any time?

A. No. sir.

Q. Do you know whether there was any distinction made between the foreigners and others at that camp as to their liberty?

A. I do not. We all eat at the same table and all was alike as far as I know.

Q. Do you know of any difference being made as to their having liberty?

370 A. No, sir.

Q. How would they go to Lockhart at night?

A. On the train.

Q. The log train, you mean?

A. Yes, sir.

Q. When would they return?

A. Well, in the morning if they liked.

Q. Do you know what the treatment of the men was at that logging camp?

Thereupon the counsel for the Government objected to the question, which objection was then and there overruled.

Q. Do you know what the treatment of the men was at that logging camp?

A. Yes, sir.

Q. State to the jury how it was?

A. It was very good in my opinion.

Q. Did you see any men ill treated while you were there?

A. I did not.

Q. Do you know of any men being forced to work against their will at that camp?

A. No, sir.

Q. Who did you work under at the camp?

A. Work under?

Q. Yes.

A. A foreman, Archie Bellinger.

Q. Who was over Mr. Bellinger do you know?

A. Mr. Gallagher.

Q. During the month of July do you know of any stealing that was going on in the cars there?

A. No, sir; I did not.

Q. Of your own knowledge?

371 A. I answered you 'no.

Q. Did you sleep in the cars with the foreigners?

A. There was foreigners in our car; yes sir; some.

Cross Examination.

Q. What was your particular job?

A. Working in the pine forest.

Q. Where was that labor performed?

A. Out in the pine forest.

Q. How much of your time were you around the camp—around the cars at the camp?

A. When I came to my meals and to sleep.

Q. Now, you say that these men had the liberty to go and come to Lockhart?

A. Yes, sir.

Q. You saw them going and coming on the cars?

A. Train of cars; yes, sir.

Q. Now, you were there in the month of July?

A. I was.

Q. Did you ever know of the cars running at night?

A. Sometimes they did.

Q. For what purpose?

A. To take logs in.

Q. Where?

A. To Lockhart.

Q. Did they come back from Lockhart at night?

A. No, sir; come back in the morning.

Q. So that if anybody went out from the cars at night—any of the foreigners, they would stay at Lockhart unless they walked back, would they?

372 A. Yes, sir.

Q. Did they have any cars in Lockhart?

A. No, sir. You mean boarding cars?

Q. Yes.

A. No, sir.

Q. Now, when was it a regulation or rule that nobody could go into Lockhart from the lumber camps during the day time?

A. In the day time?

Q. Don't you know that there was a rule that no laborers could go into Lockhart on the cars without a pass?

A. I always went myself without a pass.

Q. Was you not a kind of foreman under Archie?

A. No, sir.

Q. Do you know Arthur Buckley?

A. I do not know the name; I probably know the man.

Q. Do you know Herman Osmenski?

A. No, sir.

Q. Do you know Charles Haas?

A. I do not know the name.

Q. You do not know where they worked at the time you were there?

A. No, sir.

Q. You worked out in the forest?

A. Yes, sir.

Q. Soem of the men worked at the turpentine camps?

A. Yes, sir.

Q. Some of these foreigners?

A. Yes, sir.

Q. And some worked around the kitchen—around where the meals were prepared?

373 A. Yes, sir.

Q. You say you spent your days in the woods except at meal times and nights?

A. Yes, sir.

Q. Could there not have been whippings around the turpentine camps and around the cars and you would not have known it?

A. Yes, sir.

Q. You say you do not know any watchman but Louis May?

A. That is all.

Q. Do you know Big Harry?

A. Yes, sir.

Q. When did Big Harry go on as a sort of watchman?

A. I did not know that he went on at all.

Q. He may have gone on and you would not have known it?

A. Yes, sir.

Q. You say the men had liberty?

A. Yes, sir.

Q. To go when they pleased?

A. Yes, sir.

Q. How did these bosses go dressed; that is, Archie Bellinger?

A. As any other man.

Q. Did he wear a belt?

A. I never seen him wear any.

Q. Did he carry a gun?

A. I never seen him carry a gun.

Q. Are you still working for the company?

A. Yes, sir.

Re-Direct Examination.

Q. Is it not a fact that all of the men were working out in the woods during the day evcept the cook and his assistants?

A. Except some that might have been sick.

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Thereupon the defendants called as a witness one CHARLEY GREENFIELD, who having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?

A. Charley Greenfield.

Q. Where have you been employed during the past year?

A. By the Jackson Lumber Company.

Q. When did you go to work for the Jackson Lumber Company?

A. The twenty-sixth of June.

Q. Where did you come from?

A. New York.

Q. Did you go out with a party or did you go by yourself?

A. With a party.

Q. How many were in your party?

A. Twenty-seven.

Q. Which camp were you employed in?

A. In the logging camp.

Q. What were you employed at?

A. First went out to sawing logs and then I got transferred out to the turpentine camp.

Q. Where did you sleep at night?

A. In the cars.

Q. Do you know whether they had a watchman there at night?

A. Yes, sir.

Q. What was his name?

A. Louis May.

Q. Do you know what his duties were?

A. Yes, sir.

Q. State them.

375 Q. [A.] To fire up the engines and to call the men in the mornings.

Q. State whether or not it was a part of his duty to guard the men?

A. No, sir.

Q. Did you ever see him guarding any men at the camp?

A. No, sir.

Q. Did you ever see the men guarded by any one at that camp?

A. No, sir; only during the time there was some stealing going on.

Q. Now, just enlighten the jury about the stealing?

A. There was soem things—clothes—stolen at the camp and Mr. Gallagher sent a man out to investigate and he sent Big Harry out, and he went out to investigate and brought the two men over—that is all I saw the only guarding I saw.

Q. Where were the clothes—there?

A. They were hidden in a swamp there.

Q. Did you see the clothes when they were brought back?

A. Yes, sir.

Q. Who did they belong to?

A. To some one of the twenty-seven men that come down with me.

Q. Do you know the names of the two men who took the clothes?

A. Stoney was one, and Watch the other.

Q. How long was Halverson on there watching?

A. On there a couple of days. There was some stuff stolen out of the kitchen as well.

Q. Were you at that time working in the kitchen?

A. Yes sir; I took Stoney's job after he stole the clothes.

Q. Did you sleep in the cars with the other men?

A. No, sir; I had a room this side—about ten yards this side.

376 Q. Now, at night time, what did the men do?

A. They use to sit out and smoke and talk.

Q. Did they ever go away from the camp?

A. Some of them use to go down to Florala and Lockhart.

Q. What did they go down ther for?

A. I do not ynow what they went down there for.

Q. How would they go?

A. By the engine, sir.

Q. What time would the engine leave?

A. Use to leave there between six and half past.

Q. When would they return?

A. In the morning; some would return at night.

Q. Was any distinction made there between the foreigners and the other men?

A. Not at all.

Q. About going to Lockhart and Florala?

A. No, sir.

Q. During the time that you were there, tell the jury what the treatment of the men was at that camp?

A. Very good.

Q. Did you see any of the difficulties there?

A. The only one between Mr. Gallagher and the Hungarian.

Q. Just state what you saw of that difficulty between these parties.

A. I was standing between the dining room and the office and there is one platform between the two and I saw the Hungarian give Mr. Gallagher a shove in the office and Mr. Gallagher was going to get a ticket out for him at the time and he has got a desk there, one that you drop down, and Mr. Gallagher let go and pulled the Hungarian aside and slapped him on the head.

377 Q. What was he getting the ticket for?

A. To take his name.

Q. Did you see the Bulgarian when he went up on the platform?

A. I seen him up on the platform; I did not see him going up.

Q. You say that Mr. Gallagher went in the car to get a ticket out of the desk?

A. Yes, sir.

Q. And while he was getting the ticket this Bulgarian shoved him—

A. Yes, sir.

Q. And Mr. Gallagher—

A. Turned and pulled him inside and slapped him on the head.

Q. Did Mr. Gallagher kick him?

A. He did not.

Q. Who else was in the office at the time?

A. A man looking at the work--at the telephone, by the name of Carpenter.

Q. What did you hear Mr. Gallagher say to this man, if anything?

A. I heard him say I will teach you to run away.

Q. Was that he only difficulty you saw at the camp?

A. Yes, sir.

Q. Did you see the difficulty between Mr. Gallagher and Tom Maginnis?

A. No, sir.

Q. Was anybody else in that office at the time, besides Mr. Gallagher and the Bulgarian and this man Carpenter?

A. No, sir; everybody else was in the dining room.

Q. Was anybody else out on the platform?

A. No, sir.

378 Q. Why were you not in the dining room at the time?

A. I wanted to see Mr. Gallagher about starting out in the kitchen.

Cross Examination.

Q. You say you knew Stoney?

A. Yes, sir.

Q. What was the other's name?

A. Sam is the man that lost the clothes.

Q. You say they had stolen something?

A. Stoney had stolen something from Sam.

Q. Did you see it?

A. I saw the clothes when they were brought back and owned up.

Q. Who owned up?

A. Stoney and Whitey.

Q. Now, what about the other kitchen business?

A. Whitey stole a lot of stuff out of the kitchen and—

Q. Did you see it?

A. Yes, sir.

Q. That was not Arthur Buckley?

A. No, sir.

Q. And it was not Herman Osmenski?

A. I don't know whether he had anything to do with it or not.

Q. It was not Trulich Mehiley?

A. I don't know whether he had anything to do with it at all.

Q. You say that Mr. Gallagher was in there getting out a ticket at the time—in the car, was he?

A. When Mr. Gallagher was taking out the ticket—

Q. How far were you?

379 A. In between the cars.

Q. You was on the platform?

A. Yes, sir.

Q. How do yon know that Gallagher was getting out a ticket?

A. I saw him taking it out.

Q. What attracted your attention?

A. I wanted to see Mr. Gallagher myself.

Q. Had you had your dinner?

A. No, sir.

Q. You had not been to dinner at all?

A. No, sir.

Q. There were a good many at the dinner table?

A. Yes, sir.

Q. Now Mr. Gallagher told him he would teach him how to run away?

A. Yes, sir.

Q. Had the man been away; he had been off that morning?

A. I do not know.

Q. You did not see him when he came back?

A. No, sir.

Q. Who was it that pulled him up the steps into the car?

A. Nobody. I first saw him standing on the platform.

Q. Who carried him into the car?

A. He was not carried into the car.

Q. He went in of his own accord?

A. Yes, sir. Into which car do you mean—into the office?

Q. Yes?

A. Mr. Gallagher pulled him into the office after he give Mr. Gallagher a shove.

Q. Was that about the time he told him he would teach him to run away that he pulled him into the office?

380 A. Yes, sir.

Q. Do you know Louis May?

A. Yes, sir.

Q. These men sitting around there, these foreigners, were a pretty rough kind of class?

A. They was.

Q. Pretty fussy?

A. Yes, sir.

Q. And Louis May was the only watchman?

A. Yes, sir; at the time I lived there.

Q. The only watchman at night?

A. Yes, sir.

Q. What did Louis have to protect himself with from these men?

A. He had nothing.

Q. You are certain of that?

A. Yes, sir.

Q. When was it that this other man came on?

A. I don't know the date.

Q. How long was he on there?

A. A couple of nights.

Q. Didn't Harry have on something?

A. He did not.

Q. You are certain of that?

A. Yes, sir.

Q. Did you testify at the last trial?

A. Yes, sir.

Q. You say these men went to Lockhart?

A. Yes, sir.

Q. The bosses?

381 A. Anybody could go just as they pleased.

Q. Who went with them?

A. Nobody.

Q. Did you ever go?

A. Just as I pleased—any night I wanted to.

Q. How many times did you go there in July?

A. Every Saturday night.

Q. You had an object in going there on Saturday nights?

A. Yes, sir; because I did not have to work on Sunday.

Q. Pay night, too, was it?

A. No, the first Saturday after the twelfth.

Q. How many other men did you ever see going on any night except Saturday night? Name some of them.

A. I do not know their names, but I seen men going down there on the engines.

Q. What night?

A. Every night during the week.

Q. Well, name some of the nights, some of the particular occasions and some night. You came out with the twenty-seven?

A. Yes, sir; I knew John Davis and Pat and Sam Ross—

Q. You knew Maginnis?

A. No, sir. He did not come in my crowd.

Thereupon the defendants called as a witness one LOUIS MAY, who having been duly sworn, testified as follows:

382 Q. What is your name?

A. Louis May.

Q. Where have you been employed?

A. By the Jackson Lumber Company.

Q. How long have you been in their employ?

A. About sixteen months.

Q. What were your duties?

A. I was watchman.

Q. At what camp?

A. The log camp.

Q. Was that known as the logging camp?

A. Yes, sir.

Q. What were your duties as watchman?

A. Taking care of the engines and looking after the stock at night and firing up the engine in the morning and wake up the crew.

Q. Was it any part of your duty to guard the men in the cars?

A. No, sir.

Q. Did you ever have any instructions or orders to guard the men in the cars?

A. No, sir. Only one time, when Mr. Gallagher requested me to look for Maginnis.

Q. What was the occasion of that?

A. There was some stealing going on at the camp.

Q. Explain that to the jury—about the stealing.

A. Some clothes had been stolen there and Mr. Gallagher requested me to go in there—in the car and see if Maginnis was there, and I come back and told him that Maginnis was gone.

Q. Did you ever have occasion to look after anybody else in the cars?

383 A. No, sir.

Q. Did you ever stop or prevent anybody from leaving those cars at night?

A. No, sir.

Q. Did they or not leave the cars at night?

A. Yes, sir; all times.

Q. Where did they go?

A. To Lockhart and Florala.

Q. Was any distinction as to that liberty made as between the foreigners and the other men in those cars?

A. No, sir.

Q. How did they go to Lockhart and Florala?

A. By train.

Q. What time did the train leave camp?

A. All times of the day.

Q. What time at night?

A. Six o'clock.

Q. When did that train return?

A. It did not return. It returned the next morning.

Q. During this time that you spoke of some stealing having taken place at the camp, do you know whether an extra watchman was placed on or not?

A. Yes, sir.

Q. Who was that?

A. Harry Halverson.

Q. How long was he on?

A. Two or three nights.

Q. Do you know what the treatment of the men was at that camp?

A. It was good as far as I saw.

384 Q. Did you see any difficulty between Mr. Gallagher and the Bulgarian?

A. No, sir.

Q. Did you see the difficulty between Mr. Gallagher and Maginnis?

A. No, sir.

Q. What was the duties of Halverson while he was on there these two or three nights?

A. He was looking after the other camp—that is about one hundred and fifty yards from the other camp. That was where the stealing was going on.

Q. Did you go armed or not?

A. No, sir.

Cross Examination.

Q. Did you have a pistol during this time—July?

A. No, sir.

Q. You never owned a pistol?

A. No, sir.

Q. What did Harry carry?

A. I do not know what he carried.

Q. He was at another string of cars?

A. Yes, sir.

Q. You did not pass or exchange any compliments with him during the night?

A. No, sir.

Q. You do not know whether he had a gun or a rifle or not?

A. No, sir.

Q. Did you carry a lamp with you through the cars when you were looking through the cars?

385 A. Yes, sir; I carried a lantern.

Q. Through the cars?

A. Yes, sir.

Q. Your duties were at night?

A. Yes, sir.

Q. You do not know what was going on in the day time?

A. No, sir.

Q. You do not know what sort of treatment the men were getting around the cars in the day time?

A. No, sir.

Q. You say they came and went?

A. Yes, sir; they did.

Q. Did some of them not live at Lockhart?

A. Yes, sir.

Q. Was it the habit of those men to go home at night?

A. Yes, sir; and come out in the morning.

Q. Those were the times you spoke of coming at night and going back in the morning?

A. Yes, sir.

Re-Direct Examination.

Q. Do you mean to say that none of the men that slept in the cars went off at night?

A, Yes, sir; they did.

386

Re-Cross Examination.

Q. When did they come back?

A. In the morning.

Q. Was any cars up there for the men to sleep in at night?

A. Yes, sir.

Q. Up at Lockhart?

A. No, sir.

Q. That is what I am talking about.

A. There is a hotel up there.

Re-Direct Examination.

Q. I want to know if there were any restrictions of any kind placed on any of the men at the logging camp about going up and back at night?

A. None that I ever heard of.

Q. As a matter of fact, did they go and come or not?

A. They did.

Re-Cross Examination.

Q. Name some of those that went there. I mean the Hungarians?

A. The lame sort of a fellow.

Q. He was lame at that time?

A. Yes, sir.

Q. What lamed him?

A. I could not tell you. He was lame when he came there.

Q. He was a Hungarian?

A. I think so.

387 Q. You know that particular one because he was lame. Now, name some of the others—some of the Hungarians.

A. I could not think of their names.

Q. Could you be very positive, Mr. May, that you ever saw any Hungarians going and coming back at night?

A. Yes, sir.

Q. How often?

A. I saw them going down two or three times.

Q. You were the watchman looking around for things; is it possible that you did not learn the names of any of these Hungarians?

A. If they were mentioned to me I could remember them.

Q. What is the big man's name, the Bulgarian?

A. I don't know.

Thereupon the defendants called as a witness one JOSEPH BOYETT, who having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?
A. John Boyett.
Q. Where have you been employed, Mr. Boyett?
A. For the Jackson Lumber Company.
Q. How long have you been in their employ?
A. Since the sixteenth of April last year.
Q. What position have you held during that time?
A. I am locomotive engineer.
388 Q. On what train?
A. I was on the special train.
Q. On the logging train that hauled the logs?
A. Sometimes on the main line between Lockhart and the camp, and most of the time in the woods on the spurs.
Q. Now, what time did you go from Lockhart to the camps in the morning?
A. Leave Lockhart at five o'clock in the morning.
Q. And what time did you leave the logging camp returning to Lockhart at night?
A. About six fifteen.
Q. Did you stay at the logging camp or at Lockhart at night?
A. I stayed at the camp most of the time; sometimes in Lockhart.
Q. Your duties were principally, you say, to bring the logs from the woods to the logging camp?
A. Yes, sir.
Q. Where they would be transferred to the main line?
A. Yes, sir.
Q. You were around the camps at night?
A. Yes, sir.
Q. Were you there during July at night?
A. I was.
Q. Where did you sleep, Mr. Boyett?
A. I slept in the car where the office was.
Q. During the month of July, at night, do you know whether there was a watchman at the camps?
A. I do not.
Q. Do you know Louis May?
A. Yes, sir.

Q. What was his employment; what did he do?

389 A. He took care of those engines—fired them up and looked after that.

Q. Now, while you were there at night, did you see any guard on there guarding the men in the cars?

A. No, sir; never did.

Q. As a matter of fact, what did the men do at night?

A. Most of them slept.

Q. Did they all sleep?

A. I could not tell you that.

Q. Do you know whether all stayed there or not or whether some of them went off at night?

A. Some went away at night, I believe.

Q. Where would they go to when they went away?

A. I could not tell you that.

Q. Do you know whether any went to Lockhart and Florala?

A. Yes, sir; they went down there.

Q. How would they go, Mr. Boyett?

A. On the train, most of the time.

Q. Which train?

A. The evening train that leaves the camp for Lockhart.

Q. When would they return to the camp?

Q. Sometime in the morning.

Q. Do you know of any restrictions being placed on the men as to their going and coming at night?

A. No, sir.

Q. Do you know of any distinction being made between the foreigners and others at that camp as to having liberty at night and going where they pleased?

A. I do not.

Q. Did you ever, while you were there, run the engine back and forth between Lockhart and the logging camp?

A. Yes, sir; I did.

390 Q. Did you, while running that train, ever take the men back and forth?

A. Yes, sir; I did.

Q. What did the men have—was anything required of the men before they could ride back and forth with you on that train?

A. No, there was not.

Q. Do you know whether or not there was a pass required for a while during the day time?

A. I believe there was at noon time. I never saw a pass.

Q. That was between what hours—the pass?

A. After dinner; between one and two o'clock.

Q. During working hours?

A. Yes, sir.

Q. Now, was that pass required after working hours?

A. No, sir.

Q. How long have you been running the engine on the spurs, Mr. Boyett?

A. Since the sixteenth of last April.

Q. Are you still running the engine on the spurs?

A. Yes, sir.

Q. Now the engines, while you were running the engines on the spur, would they go up to Lockhart at night or stay at the camp?

A. At the camp during the week and on Saturday night they run them to Lockhart if they needed any work on them to carry the men.

Q. They stayed at the camp during the week?

A. Yes, sir.

Q. And on Saturday night went up to Lockhart?

391 A. Yes, sir.

Q. What did they go to Lockhart for—the engine on Saturday night?

A. Generally went in to carry the men in after supper on Saturday night.

Q. Now. during the week, at night, you would be at the logging camp, would you?

A. Most every night.

Q. You slept in the cars?

A. Yes, sir.

Q. How often would you be at the logging camp during the day?

A. It would be every one hour or two hours or three hours; quite often during the day.

Q. You would go out and get a load of logs and bring them in to camp?

A. Yes, sir.

Q. Switch them on the main line?

A. Switch them on the side track or spur.

Q. And that would bring you to the camp about every hour or two during the day?

A. As a rule.

Q. While you were there at the camp, Mr. Boyett, at night or during the day every hour or two, did you see any mistreatment of the men working at the logging camp?

A. I never did.

Q. What men would be at the camp during the day time—during working hours?

A. I suppose the cooks especially, and the bookkeeper and sometimes a few men who were not feeling able to work—being sick or something of that sort.

392 Q. And the other men would be away?

A. In the woods working.

Q. Where would they be working?

A. In different places; some on the railroad track and cutting logs and all like that.

Q. Would you see these men during the day as you were running back and forth?

A. Yes, sir; I saw almost all of them.

Q. About how many men were engaged in rolling logs onto your train and assisting in that work?

A. I think there was about five men in the loading crew, two crews of five men each.

Q. Was there more than one crew?

A. Two crews.

Q. Could you see the other men from where you were loading the cars?

A. Not all the time, no.

Q. Could you see them any time?

A. Yes, sir.

Q. Could you see the teamsters?

A. Yes, sir.

Cross Examination.

Q. You say you were running the engine?

A. Yes, sir.

Q. Was it your duty to take note of the men and watch the men or watch your engine and keep it in order?

A. It was my duty to run the engine.

Q. It was not your duty to look after the men?

A. No, sir.

393 Q. Didn't the men have bosses, each crew?

A. Yes, sir.

Q. How many men were employed at the camps during the time you were there in July?

A. I believe there must have been eighty men.

Q. That was at the lumber camp—that was the aggregate that slept there?

A. Yes, sir.

Q. Now, you say the men had liberty to go and come without restrictions. Now let us find out something about the restrictions, if you know. Was it any of your business to look after the men at night?

A. No, sir.

Q. What did you do usually when you got there after the labors of the day?

A. Walk about the camp.

Q. How late?

A. Eight or nine o'clock.

Q. When did you go to bed?

A. Go to bed then.

Q. And then what?

A. Sleep, I guess.

Q. Until what time?

A. Twenty minutes to five.

Q. Did you know the Hungarians—you saw a number of Hungarians there?

A. I saw them—I did not know them.

Q. How many—how big a crowd of Hungarians left there any night in July to go to Lockhart and came back?

A. I do not know the number.

Q. Did you ever see any, as a matter of fact?

A. Yes, sir.

394 Q. Which ones?

A. I do not know whether they were Hungarians or what they were.

Q. Then you do not know whether all of the men were treated exactly alike or not?

A. I said there was a man that came from New York there—

By Defendants' Counsel:

Q. He asked you whether all were treated alike or not?

A. I think they was.

By Government's Counsel:

That is merely thinking. You were not there when any man was brought back?

A. No, sir.

Q. You never saw any mistreatment?

A. I do not think I did.

Q. Did you hear of any mistreatment there in July. Did you hear of any whipping being done there during the month of July—you may not call it mistreatment?

A. Hear so?

Q. Yes; who did you hear talk about it?

A. I could not tell you who was telling it.

Q. Was it Bob?

A. No, sir.

Q. Was it Archie Bellinger?

A. No, sir.

Q. Was it Angelo?

A. No, sir.

Q. Was it Harry?

A. No, sir.

Q. Didn't you associate with them a good deal—thrown with them?

395 A. I did not associate with anybody in particular.

Q. Who did you sleep with in the cars?

A. Alone.

Q. Did Bob sleep in the same car?

A. I think not.

Q. You say there was no—when did those boys come in on the train; what month was it; was it the month of July?

A. I believe it was.

Q. You say it was a short time; how long?

A. Two or three weeks.

Q. Was your instructions as engineer not to allow any of the Hungarians or any of that New York crowd to go up to Lockhart between six in the morning and six in the evening?

A. I never had any instructions to that effect.

Q. Did you carry any men during that time?

A. I did at night.

Q. Did you bring them back at night?

A. Yes, sir; on several occasions.

Q. The same men that went up; I understood you to say the train did not come back at night; it stayed there at night?

A. Sometimes returned and sometimes did not.

Q. And the only time you ever brought anybody back at night was when you brought the New York crowd?

A. On pay nights.

Q. I am talking about what you did?

A. That is what I did.

Q. How many other engineers were there on that line?

A. About three with myself, most of the time.

Q. You were not around the camps except as passing to and from in the day time with your load of cars going up to Lockhart and back?

396 A. No, sir; at night.

Q. The men would come in at night time?

A. Yes, sir.

Q. Who would come in with them—the bosses?

A. They would come in without the bosses.

Q. Would the bosses come and go with them?

A. Yes, sir.

Q. Now, at the time you were there in July, do you know when Big Harry was put on as watchman?

A. No, sir.

Q. Do you know who was the watchman during the time you were there?

A. I know that Louis May was the engine watchman.

Q. You do not know what he did at night when you went to sleep?

A. No, sir.

Q. What was Archie Bellinger during the month of July?

A. He was a foreman there as long as I have been there except for a month.

Q. What crew was he bossing in July—a Hungarian crew or a New York crew?

A. Most all men.

Q. Bob was boss of him?

A. Yes, sir.

Q. That crowd was a sort of desperate crowd, that New York gang?

A. Looked like that to me.

Q. Didn't Bob and didn't Bellinger have to go kind of prepared for that gang in case of an emergency?

A. I don't know.

397 Q. Didn't they carry pistols?

A. I have seen them carrying pistols.

Q. In the month of July around the camps?

A. Not very much during that time.

Q. When was the most of the time they were carrying revolvers?

A. Mostly in the spring time of the year.

Q. When was Archie carrying his revolver?

A. Up about the time the New Yorkers came; may be a few days after they came; I think he laid it aside about that time.

Q. He did carry a revolver?

A. Yes, sir.

Thereupon the defendants called as a witness one ERNEST DIETRICHSEN, who having been duly sworn, testified as follows:

Direct Examination.

Q. Where have you been employed?
A. Jackson Lumber Company.
Q. When did you enter their employment?
A. July 2nd.
Q. Where did you come from?
A. New York.
Q. At what camp were you employed?
A. Log camp.
Q. Are you still there?
A. Yes, sir.
398 Q. What was your work at that camp; what kind of work?
A. All over—in the woods and in the kitchen.
Q. Where did you sleep at?
A. I first slept in a little house down below the camp about three weeks and after that slept in the cars.
Q. Do you know whether there was a watchman there?
A. Yes, sir.
Q. What was his name?
A. Louis May.
Q. What did he do?
A. He steamed up the engines and waked the people up in the morning.
Q. Did you ever see him guarding men in the cars at night?
A. No.
Q. What did the men do at night?
A. I don't know; slept, I think.
Q. Did you ever see any of them leaving at night, going away at night?
A. Sometimes go to Lockhart.
Q. What would they go up there for?
A. To see the town.
Q. Do you know whether or not the men were guarded and not permitted to go at night and come back when they pleased?
A. I use to go down with the engine and come back.
Q. How about the other men?
A. I see the same thing.

Q. Did you see any difference made between the foreigners and the others?

A. Not at the logging camps.

Q. You are a foreigner yourself, are you not?

A. Yes, sir.

399 Q. Did you sleep in the cars with the other foreigners?

A. Yes, sir.

Q. Do you know anything about any stealing there in July?

A. Yes, sir.

Q. Tell the jury about that?

A. When I was sleeping in the little house we was working and when we went home a gold watch and chain was gone.

Q. I will have to ask you to repeat that?

A. I say it was night when we went back home from work and all trunk was opened and everything was stolen—gold watch and chain was stolen and—

Counsel for Government objects to line of testimony.

Objection overruled by the Court.

Q. You say you came home from work one night and found the trunks had been opened and a gold watch and chain, and what else was gone?

A. And a revolver.

Q. Do you remember whether about that time an extra watchman was put on?

A. Yes, sir. There was another occasion when a suit of clothes was stolen.

Q. Who was the watchman that was put on?

A. Big Harry.

Q. Do you remember how long he was on there?

A. No.

Q. But you know about the time he was put on?

A. I was living in the little house at that time and the things were stolen in the cars and I just heard about it.

Q. And the suit of clothes was stolen in the cars?

A. Yes, sir.

400 Q. Do you know what the treatment of the men in the camp was?

A. It was all right.

Q. Do you know of any of them being mistreated at the camp?

A. I heard one been beat, but I did not see it.

Q. Did you see the difficulty between Mr. Gallagher and the man known as Maginnis?

A. Yes, sir.

Q. Did you see that?

A. Yes, sir.

Q. What did you see; just state what you saw?

A. That was the first night—the second of July about half past three—he had been kicking about the food and the beds in the cars and I saw he started to fight in the car and took his coat off and after that he said he wanted more food, and Mr. Gallagher says will you be a good boy now, and after that Mr. Gallagher fired three shots.

Q. The trouble was about what?

A. About the cooking; he says he have not got no eat all day and he would not sleep with the Polarks.

Q. And he threw off his coat and hat?

A. Yes, sir.

Q. What did he say to Mr. Gallagher?

A. I cannot remember that.

Q. Do you remember whether he cursed him or not?

A. Yes, sir.

Q. What did he curse him?

A. He kicked him.

Q. Who kicked him?

A. Maginnis.

Q. Maginnis kicked who?

401 A. Mr. Gallagher.

Q. Do you remember what name he called him?

A. No.

Q. Did Mr. Gallagher shoot at him or did he shoot up in the air? How did he shoot?

A. He shot in the air.

Q. He did not shoot at Maginnis?

A. No, sir.

Q. Did you come down with Maginnis?

A. Yes, sir.

Q. You say Maginnis had always been raising trouble?

A. Yes, sir.

Q. Had he been raising any trouble coming down?

A. Yes, sir; on the boat and on the cars.

Q. How was he raising trouble?

A. He had a fight with everybody and kicked about the food and says have not got nothing to eat.

Q. He was fighting with everybody?

A. Yes, sir.

Q. Do you know anything about his stealing any tobacco coming down?

A. Yes, sir.

Q. Tell the jury about that?

A. Well, there was a man brought us tobacco in the car and him and another fellow swiped out the whole thing and half of them did not get nothing.

Q. Who swiped it?

A. Maginnis and some fellow. He was kicking at the camp.

Q. You did not see the difficulty between Mr. Gallagher and the Bulgarian?

A. No, sir.

402

Cross Examination.

Q. You are working there now?

A. Yes, sir.

Q. You have a pretty easy job, don't you?

A. Yes, sir.

Q. What do you do?

A. Now I am swamping in the woods.

Q. What is that, walking around looking at the other fellows work?

A. No; using an ax.

Q. Where do you sleep now?

A. In the cars.

Q. That little house where you saw some things stolen from?

A. No.

Q. You seem to know a good deal about the stealing there. Were they stolen from you?

A. Yes, sir; the revolver was taken from me.

Q. Where did you bring that from?

A. Copenhagen.

Q. Did you bring it down to the camps with you?

A. I had it in my trunk.

A. Now, how do you know—did you get it back?

A. Yes, sir.

Q. Who got it back?

A. Mr. Archie Bellinger; it was all broken too pieces.

Q. That was a mighty mean way to treat you, was it not?

A. That man who stole it broke it up.

Q. You do not know that was; you did not see who stole it.

A. No; he was a Hungarian.

Q. What are you?

A. Dane.

403 Q. You did not see that Hungarian take it, did you?

A. No.

Q. Who told you that the Hungarian took it—Archie?

A. No; he was in the blacksmith shop—caught him there.

Q. You say Maginnis was a very bad boy?

A. Yes, sir.

Q. You saw him stealing some tobacco?

A. Yes, sir.

Q. Tell us how you saw him steal it?

A. A couple of fellows brought the tobacco in and Maginnis grabbed it and kicked—

Q. And that is the way he stole it?

A. Yes, sir.

Q. Was that about the only mean trick you saw Maginnis doing, was grabbing that tobacco?

A. He was fighting.

Q. Was he fighting or playing with the boys?

A. He was fighting.

Q. Did he fight Herman?

A. I don't know him. He was fighting with Squarehead.

Q. He did not hurt Squarehead much, did he?

A. No.

Q. Now, get down to the fight between Maginnis and Gallagher?

A. Yes, sir.

Q. That happened after you got to the camp?

A. Yes, sir.

Q. The same day?

A. Yes, sir; the first day.

Q. Now, you—the first you saw of it was when Maginnis kicked at Gallagher?

404 A. Yes, sir; and chunking off his coat.

Q. And Maginnis had refused to go into the car—he did not want to go and sleep with the Polarks?

A. Yes, sir; that is the complaint.

Q. And what else was he kicking about?

A. Say don't get nothing to eat the whole day.

Q. Didn't Gallagher do a little kicking?

A. I don't know.

Q. You were there looking at it?

A. He kept his coat.

Q. Who was it that handed his coat to some one else?

A. Maginnis handed his coat to another fellow and then Mr. Gallagher show his revolver.

Q. Had you seen Mr. Gallagher with that revolver before that day?

A. No, sir.

Q. That was the first time you had seen it?

A. Yes, sir.

Q. Where did he get it from?

A. His pocket.

Q. His back pocket?

A. Yes, sir.

Q. What was Maginnis' position when Gallagher shot?

A. He was kneeling down.

Q. How was his hands?

A. Up this way, right in front of Mr. Gallagher.

Q. And Mr. Gallagher had his pistol pointed at him?

A. And Mr. Gallagher say will you be a good boy now, and that time shot off his pistol three times.

Q. Right close to his head?

A. No.

405 Q. How far from him?

A. Sort of side-wise.

Q. What did Maginnis do then?

A. He got up.

Q. And went in with the Polarks?

A. Yes, sir.

Q. And you did not hear him kicking any more about something to eat?

A. No.

Q. Big Harry did not watch the little house where you slept?

A. I saw him one night with a lantern.

Q. In the little house?

A. Yes, sir.

Q. What was he doing with a lantern?

A. Throwing it and walking around.

Q. How many nights did he do that?

A. I cannot remember.

Q. Was it a good many nights that he came around with that lantern?

A. I just seen him that night; he may have come around again.

Q. What did Harry have?

A. I don't know.

Q. Didn't he carry anything besides a lantern?

A. No, sir.

Q. Didn't you ever see him with a gun any other time?

A. No.

Q. You are sure of that?

A. Sure, I never.

Q. Didn't Harry have a rifle around there?

A. He had a rifle when he was going hunting.

Q. Who was he hunting for?

406 Q. [A.] For himself.

Q. Was he not hunting for boys about your size and a little bigger?

A. No, sir.

Q. Don't you know that he did bring some boys back there?

A. No, sir.

Q. You do not know that?

A. No, sir.

Q. Did you hear him say so?

A. Yes, sir; I heard the people.

Q. Did you hear the bosses talking about it?

A. No, sir.

Q. They found the boy who stole the pistol, did they?

A. I don't know; he was gone when I went up there.

Q. Gone where?

A. I don't know.

Q. You mean to say that a man had stolen your pistol when you come there?

A. Yes, sir.

Q. How could he steal your pistol?

A. They told me he stole it.

Q. You carried your pistol there with you?

A. I had it in my trunk.

Q. Did your trunk get there before you got to the camp?

A. I leave my trunk at the little house and he was not working and when we went back at night the trunk was broken open.

Q. What became of the boy?

A. I don't know.

Q. He never came back there any more?

A. No, sir.

407 Q. You never saw him any more?

A. No, sir.

Q. You say the Hungarians were treated like you and the others?

A. Yes, sir; at the log camp.

Q. What sort of nationality is Squarehead? Is he a Hungarian or a German?

A. I think he is a Russian Jew.

Q. He was treated like all the other boys?

A. Just the same.

Q. Did you see Squarehead whipped?

A. No.

Q. Did you see him when his arms were bruised and blistered?

A. Yes, sir.

Q. Don't you know that he was whipped because he would not work in that condition?

A. He was blistered from the sun.

Q. What did they whip him about?

A. I do not know if they whipped him.

Q. You did not hear that?

A. No, sir.

Q. Did you testify here last week?

A. About a week ago.

Q. Do you remember whether you said then that you knew what Squarehead was whipped about?

A. I do not think he was whipped.

Q. When you first went there it was the third of July?

A. I got to the camp on the second of July and started to work on the third.

Q. How long did you sleep in the little house away from the cars?

408 A. About three weeks.

Q. You do not know what was going on at the cars at night during that time?

A. No, sir.

Q. You say the men left the cars and came back when they wanted to down there?

A. I could do that.

Q. How do you know if you slept off three or four hundred yards?

A. I could do that.

Q. You were a pretty good friend of Bob's?

A. When I do my work just the same as any other.

Q. You are a good friend of Harry's?

A. I don't know Harry.

Re-Direct Examination.

Q. How far is this house from the cars?

A. Not very far.

Q. Well, about how far?

A. Could walk over to that house in one minute.

Q. And after you stayed there for three weeks you went to sleep in the cars?

A. Yes, sir.

Q. When you went up to Lockhart and back did you see others going?

A. Yes, sir.

Q. The whole bunch going?

A. Yes, sir.

Q. Hungarians as well as others?

A. Yes, sir; everybody went.

409

Re-Cross Examination.

Q. How many times did you go up to Lockhart during the month of July after night?

A. Every fourteen days.

Q. Then you could not have gone often during the month of July?

A. I worked there in July.

Q. How often did you go to Lockhart with a big crowd of men?

A. About every two weeks.

Q. I am talking about how often in the month of July?

A. May be two or three times.

Q. How many Hungarians were in your party when you would go?

A. I do not know; I could not speak to them.

Q. What would you and they go down there for?

A. Could not stay in the log camp all the time; had to see something else.

Q. Was you not going down there to get paid for the fourteen days' work.

A. Would go every month, Saturday after the twelfth of the month for that.

Thereupon the defendants called as a witness one TOM SMITH, who, having been duly sworn, testified as follows:

Direct Examination.

Q. Where have you been employed, Mr. Smith?

A. By the Jackson Lumber Company.

Q. When did you go to work for the Jackson Lumber Company?

A. August was a year ago.

Q. What kind of work did you do for them?

410 A. Scaled logs.

Q. At what camp?

A. Camp No. 1, the logging camp.

Q. Where did you sleep?

A. In the cars.

Q. Do you know whether or not there was a watchman at that camp?

A. Yes, sir.

Q. What was his name?

A. Louis May.

Q. What were his duties?

A. To get up steam on the engine and to wake up the crews in the mornings.

Q. Do you know whether or not he guarded the men in the cars?

A. No, sir; he did not.

Q. Did you ever see him guarding any men in the cars?

A. No, sir.

Q. Did you ever see the men being prevented from leaving the cars or detained in the cars in any way at night?

A. No, sir.

Q. As a matter of fact what did they do at night, Mr. Smith?

A. Went to bed, I guess.

Q. Well, before they went to bed?

A. Set around and talked.

Q. Did they ever go away from the camp at night?

A. The men that stayed at the camps never noticed them.

Q. Did they ever go to Lockhart and Florala?

A. I have seen them going to Lockhart and Florala.

Q. When would you see them going to Lockhart and Florala?

A. Saturday nights mostly.

411 Q. Why did they go on Saturday nights mostly?

A. That is the men that stayed at the camps went on Saturday night mostly.

Q. Why did they go on that night mostly?

A. I do not know.

Q. That was the night they went?

A. Principally, yes, sir.

Q. How did they go?

A. On the train.

Q. What time did the train leave camp?

A. About six-thirty on Saturday nights.

Q. What time would they usually get back?

A. Sometimes they did not get back until Sunday evening and sometimes Saturday night about eleven o'clock.

Q. Was any pass required of the men?

A. No, sir.

Q. To go on the train?

A. No, sir.

Q. Was there any difference made between the foreigners and the other men going up and back on that train?

A. No, sir.

Q. Did you at any time see anybody restrained or prevented from going back and forth?

A. No, sir.

Q. Do you know anything about any stealing at the camp in July or at any other time?

A. No, sir.

Q. You do not know anything about that?

A. No, sir.

Q. What was the treatment of the men at that camp?

A. Good.

412 Q. Have you seen anybody mistreated while you were there?

A. No, sir.

Q. Did you see the difficulty between Gallagher and Maginnis?

A. No, sir.

Q. Or the difficulty between Gallagher and the Bulgarian?

A. No, sir.

Cross-Examination.

Q. Where did your duties call you?

A. Out in the woods.

Q. Then you were about the camps a very little of the time?

A. Mostly times meal time and nights.

Q. At night you went to Lockhart?

A. No, sir.

Q. Which one of the cars did you sleep in?

A. In the second car from the dining car.

Q. How many of the other bosses slept in there?

A. Didn't any of the bosses.

Q. Where did the Hungarians sleep?

A. In the next car below me and some in my car.

Q. How many nights did you sleep there during the month of July?

A. Very nearly all except on Saturday nights.

Q. How many Hungarians were you personally acquainted with?

A. None.

Q. You had no communication with them?

A. No, sir.

Q. You did not mingle with them?

A. No, sir.

413 Q. How did you come to be observing particularly these Hungarians and the numbers going to Lockhart on Saturday nights? Was it any part of your duty to take note of these men?

A. No, sir.

Q. Were you sent along to take care of them?

A. No, sir.

Q. Do you know of anybody else who was?

A. No, sir.

Q. Did you see Archie Bellinger or Big Harry at Lockhart?

A. No, sir.

Q. You never did.

A. I have seen them there on pay nights.

Q. You spoke about the conditions being good, about the treatment. Do you refer to the treatment of yourself?

A. Everybody.

Q. What do you know about the treatment of everybody?

A. All were treated alike.

Q. How much of your time were you with these Hungarians in the woods?

A. I would pass by them occassionally in the day, but I was not with them.

Q. You had nothing to do with their work; you did not do any kind of that kind of work?

A. No, sir.

Q. You were not with them at the camps?

A. No, sir.

Q. Then you do not know much about the treatment they got of your own knowledge?

A. Nothing, only what I saw them get at the tables.

Q. You never went in one of the cars where the Hungarians slept in your life?

414 A. Only in the car where I slept at night.

Q. Are you still working for the company?

A. Yes, sir.

Q. Your feelings are entirely friendly to the company?

A. Yes, sir.

Q. You are a good friend of Bob's?

A. Yes, sir.

Q. And of Harry?

A. Yes, sir.

Q. They are good friends of yours?

A. I hope so; yes, sir.

Q. You say the treatment of them was good. Were these Hungarians a quiet and peaceable set or sort of rowdy?

A. In the cars at night they were all kicking up a fuss—would be singing and dancing and cutting up.

Q. The bosses carried guns, did they not?

A. I do not know.

Q. Didn't Rob carry a gun?

A. Yes, sir; I have seen him with a gun, but I did not see him carry it.

Q. Around the camps?

A. I saw it in the office.

Q. What was he doing with it?

A. He had it in his hand cleaning it up.

Q. Have you not seen it around his breeches several times?

A. No, sir.

Q. Did you testify two weeks ago?

A. I saw him with a gun.

Q. Didn't you say you saw Bob with a gun?

A. Around the camp.

415 Re-Direct Examination.

Q. What kind of labor did the Hungarians perform?

A. Some were sawing logs and some were working on the section gang.

Q. About how many slept in the car with you?
A. I guess some about eight or ten Hungarians.
Q. And you ate at the same table, did you?
A. Yes, sir.
Q. How many Bulgarians slept in the car with you?
A. I do not know the Bulgarians from the Hungarians.
Q. You do not know the difference?
A. No, sir.
Q. How many Germans slept in the car with you?
A. I do not know.
Q. How many Jews?
A. I do not know.
Q. You do not know whether they were Hungarians or what they were; all you do know is that they were foreigners?
A. Yes, sir.

Thereupon the defendants called to maintain the issues in their behalf one JOHN OWENS, who, having been duly sworn, testified as follows:

Direct Examination.

Q. Where have you been employed?
A. At Lockhart, Covington County, Alabama, for the Jackson Lumber Company.
416 Q. What kind of work did you do for them?
A. Scaled logs.
Q. How long have you been working for them?
A. A little over four years.
Q. At what camp did you work?
A. I worked at Mr. Gallagher's camp.
Q. Where did you sleep?
A. At home, in Lockhart. My family lives in Lockhart.
Q. You went back and forth every night?
A. Yes, sir.
Q. What train did you leave the log camp on at night to go to Lockhart?
A. On No. 3.
Q. What time does that leave?
A. About half past six o'clock at night.
Q. And returned the next morning?
A. Yes, sir.
Q. Mr. Owens, state whether or not others who did not live at Lockhart went back and forth on this train?

A. Yes, sir; anybody, any one and each that wanted to.

Q. Was there any difference or distinction made between the foreigners and the others?

A. No, sir.

Q. You went up every night, you say?

A. Yes, sir.

Q. And came back in the morning?

A. Yes, sir.

Q. When did the men at the log camp go up to Lockhart principally—what nights?

A. Well, they would generally go every Saturday night mostly.

Q. Did they go any other nights in the week as well?

A. Yes, sir; any time they wanted to go.

417 Q. Was any pass required of them?

A. No, sir.

Q. When they went up to Lockhart at night when would they return?

A. The next morning go back on the number three; expected to get back to camp about five-thirty or six o'clock.

Q. Did you work out in the woods where you could see these men working?

A. Yes, sir; I was passing through the woods along where they was at work.

Q. What was their treatment, Mr. Owens?

A. Good as far as I know.

Q. Where did you eat at during the day?

A. Well, I boarded myself generally; I generally carried my dinner with me; sometimes I eat at the camp.

Q. You say you were passing back and forth among them?

A. Yes, sir.

Q. Was this passing back and forth of such a nature—you were thrown with them constantly while they were at work?

A. Yes, sir.

Q. Did you have an opportunity of seeing them?

A. Yes, sir.

Q. Seeing them at work?

A. Yes, sir; I saw them at work.

Q. And observed their treatment?

A. Yes, sir.

Q. You say that treatment was good?

A. Yes, sir.

418

Cross-Examination.

Q. Your business is a log scaler?

A. Yes, sir.

Q. You were appointed by the Jackson Lumber Company or whom?

A. Mr. Gallagher.

Q. He points you to your duties?

A. Yes, sir; when he is there and when he is not Mr. Bellinger.

Q. You know them pretty well?

A. Yes, sir.

Q. Now, these men you speak about circulating among in the woods; who were they under; who was their boss?

A. Mr. Edge.

Q. Edge who?

A. Mr. Will Edge was section boss there.

Q. How many men did he have?

A. I do not know; probably twelve or thirteen.

Q. The next crowd you would circulate among—who was their boss?

A. He had another man there, but I forget his name.

Q. If you do not know who the bosses were you do not know much about the men?

A. I passed through them.

Q. Were you personally acquainted with any of them?

A. With the men?

Q. Yes, sir.

A. No, sir.

Q. You did not pay any attention to them much, did you?

A. I did not talk with them.

Q. How close were you to them?

A. I went up and down the road right along where they was at work on the railroad and some sawed logs and some put them on the cars.

419 Q. When was it they had this pass regulation on that train. Of course, they did not require any pass of you, living in Lockhart, and you had to go and come, but when did they have that regulation that these foreigners could not go up before six o'clock and—

A. I do not know anything about that.

Q. You had nothing to do with the running of the train?

A. No, sir.

Q. Now, such a regulation may have been in force and you would not have known it in the month of July?

A. I do not know. I never heard of any.

Q. You never went about inquiring; you never asked for a pass?

A. No, sir.

Q. You did not need any yourself?

A. No, sir.

Q. About the droves of men you have seen in Lockhart on Saturday nights—they would go on the train?

A. Yes, sir;; all that wanted to.

Q. Would they go back on the train that night?

A. No, sir; go back the next morning.

Q. Did they have any cars at Lockhart to sleep in?

A. No, sir.

Q. Where would they sleep?

A. I could not tell you that.

Q. You say you do not know any personally? Will you give me the names of some you saw at Lockhart? I won't limit you to the Hungarians, Germans, Bulgarians or any?

A. I do not know their names.

Q. Would you know them if you would see them again?

A. Yes, sir.

420 Q. Some of those you have seen there on Saturday nights?

A. Yes, sir.

Q. How often?

A. Could not tell.

Q. How come you to notice them?

A. They would go out on the train with me.

Q. Do you know who was with them looking after them?

A. No, sir: nobody.

Q. Was not Edge, nor Bob nor Archie?

A. No, sir. Sometime Mr. Gallagher went in and out on the train himself in the morning.

Q. You had nothing to do with the men when you were out in the woods scaling logs?

A. No, sir.

Q. Didn't you kind of have directions to count and look after them?

A. No, sir.

Q. What did you carry a revolver for?

A. No, sir.

Q. In the month of July?

A. No, sir.

Q. How many nights did you stay in the camps in the month of July?

A. No, sir.

Q. You do not know what watchman was there?

A. No, sir.

Q. You do not know how many?

A. No, sir.

Q. You do not know what his instructions were?

A. No, sir.

Q. You had nothing to do with keeping the men from running away?

A. No, sir.

421 Re-Direct Examination.

Q. Do you know a man at the camp by the name of Benderstock—a Pole?

A. Yes, sir; he was out there.

Q. Did you hear a conversation between this man Benderstock and Mr. Gallagher at the camp in July?

A. Yes, sir.

Q. Will you just state what that conversation was?

A. Between Mr. Gallagher and Benderstock?

Q. Yes?

A. Benderstock was at the office at the camps and told Mr. Gallagher and Mr. Porter that some one had—

Counsel for Government thereupon asked the purpose of testimony, which was overruled by the Court.

Q. Just state what the conversation was.

A. And told Mr. Gallagher and Mr. Porter that he had lost some clothes, coat and a couple of shirts, and they told him all right, and he asked them to see if they could locate them and look after the matter and get them back, and they told him yes, they would see if they could get the clothes back or something like that—I do not remember exactly what they told him.

Q. Do you remember whether or not in that conversation this Benderstock told Mr. Gallagher who it was that had taken his clothes or he thought had taken his clothes?

A. No, sir; I do not remember that.

Q. Did he tell Mr. Gallagher when they had been taken?

A. The night before—I believe to the best of my recollection, or that morning sometime.

Q. Do you remember whether in that conversation he said the man had taken or the man he thought had

422 taken them was the man he had given five cents to

that morning to get some tobacco with and that the man had gone off and had not come back?

A. No, sir; I do not remember that.

Cross-Examination.

Q. Who is Benderstock?

A. He is a man that works at the camp.

Q. What nationality is he?

A. He is a Dane.

Q. Could he talk?

A. Yes, sir; very well.

Q. Talk English?

A. Yes, sir.

Q. You heard him talking to Mr. Gallagher?

A. Yes, sir.

Q. Have you seen that man since?

A. Yes, sir; he is up at the mill—working at the mill.

Q. Do you know whether he came down with you to be a witness or not in this case?

A. No, sir.

Q. When was that that this conversation took place?

A. It was about the nineteenth of July.

Q. Why do you say so?

A. I was there.

Q. What did you do that day?

A. I scaled logs.

Q. How many logs did you scale that day?

A. I could not say.

423 Q. Do you keep an account of the logs you scale?

A. Yes, sir; I suppose about a thousand.

Q. Was that a pay day?

A. No, sir.

Q. How did you come to be in Gallagher's office?

A. I have to go to the office every morning to give a statement of my logs.

Q. The logs you scaled the day before?

A. Yes, sir.

Q. Was that your business there then?

A. Yes, sir.

Q. Were you called upon to witness this conversation?

A. Yes, sir.

Q. How did you come to pay any attention to it?

A. I was standing in his office at the time the man was telling it.

Q. And that is the only reason you know it was the nineteenth of July?

A. Yes, sir; I remember.

Q. Did you make any note of the date?

A. No, sir; not of that matter.

Q. Is it not a fact that you have fixed the date of the conversation with Gallagher and others since that time?

A. No, sir.

Q. You tell us that you have never talked to Gallagher or anybody else since that conversation in the office, since it occurred?

A. Yes, sir; I have talked with them.

Q. Did you talk with them several times about it?

A. No, sir.

424 Q. You have talked with them once, anyhow?

A. Yes, sir.

Q. Was not the question of time and dates gone over in this conversation and you fixed the time as of the nineteenth of July by reason of the suggestions made to you by Gallagher?

A. No, sir.

Q. If you do not remember how many logs you scaled that day or anything else that occurred that day why do you remember the date?

A. I can tell by looking at my log book.

Q. Have you referred to your log book to fix the date of this conversation between Gallagher and Benderstock?

A. Yes, sir.

Q. And then you know it was the nineteenth?

A. About the nineteenth as near as I can come to it.

Q. Do you know about a man being brought back there charged with stealing?

A. No, sir.

Q. Did you hear or talk with any of them about any proceedings taken in Court, any warrant sworn out for anybody for stealing those things?

A. No, sir.

Q. Has Benderstock been there—have you seen him every day or two since that time?

A. No, sir; not over one or two times. He works at the mill.

Q. Where was he working then?

A. At the camp.

Q. When was he transferred to the mill?

A. I could not say.

Q. You do not remember anything about dates except this particular instance, this being the nineteenth.

A. No.

425 Re-Direct Examination.

Q. You say you have been working for the company for four years?

A. A little over.

Q. Where did you live before that?

A. In Holmes County, Florida.

Q. How long have you lived in Holmes County, Florida?

A. About twenty years.

Q. Hadn't you farmed for twenty years before that time?

Counsel for Government then and there objected to said question, which objection was sustained.

Q. You are still working for them?

A. Yes, sir.

The defendants then and there, to maintain the issues in their behalf, did call as a witness one **WILLIAM TALBOTT**, who, having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?

A. William Talbott.

Q. Where have you been employed?

A. By the Jackson Lumber Company.

Q. How long have you been working for the Jackson Lumber Company?

426 A. Since July 4th.

Q. Where did you come from before you went to work for them?

A. New York.

Q. Did you come out with a party or by yourself?

A. With a party.

Q. What camp did you work at?

A. Jackson Lumber Company.

Q. Which one—the turpentine, logging or mill?

A. The logging camp.

Q. Which camp?

A. The logging camp.

Q. What kind of work did you do?

A. When I first went there?

Q. Yes.

A. Swamping in the first place.

Q. Where did you sleep at at nights?

A. In the sleeping car.

Q. Did they have a watchman at the camp?

A. Yes, sir.

Q. What was his name?

A. Louis.

Q. Louis May?

A. Yes, sir.

Q. What were his duties; what did he do?

A. He went around the cars there and took care of the engine and horsler at night I suppose, and in the morning got the engines in working order.

Q. Did he guard the men in the cars at night?

A. Not as I know of.

Q. Did you sleep in the cars with the other men?

A. Yes, sir.

427 Q. Did any foreigners sleep in the car with you?

A. Yes, sir; all slept the same as me; all slept in the cars.

Q. Did you ever see this watchman prevent any man from leaving the car at night?

A. No, sir.

Q. Or attempt to stop any man from going out?

A. No, sir.

Q. Where did the men go at night time; did they ever leave at night?

A. If they liked to leave.

Q. Did they ever leave it?

A. Could go any where they pleased, I suppose.

Q. As a matter of fact did they ever go away?

A. Yes, sir; I had the privilege of going anywhere I pleased.

Q. Did any of the other men go away?

A. I suppose they had the same privilege as I did.

Q. Did you see them going and coming?

A. They had the same privilege as I did.

Q. You are not answering my question. Did you see them going and coming at night?

A. I seen them going away and coming back as they pleased.

Q. Where did they go to?

A. To Lockhart and to Florala?

Q. How did they go?

A. I suppose they took the train out and walked or did something like that.

Q. What time did the train leave at night?

A. Left there about half past six.

Q. Did you have to have a pass to go?

A. Not as I know of.

428 Q. Did you see the other men have passes?

A. Not as I know of. No, sir; I did not.

Q. Did you go up to Lockhart and Florala?

A. Generally I did.

Q. What night did the men go on principally?

A. On Saturday night.

Q. Why did they go on Saturday nights?

A. That is something I cannot say.

Q. But nearly all went on Saturday nights?

A. Yes, sir.

Q. Did you see any difference there as to the going and coming between the foreigners and the other men?

A. No, sir.

Q. Do you know anything about any stealing there in the month of July or about that time?

A. There was some clothes stolen there.

Q. Do you know whether about that time an additional watchman was placed on duty?

A. No. sir; I do not.

Q. You do not know anything about that?

A. No, sir.

Q. Do you know what the treatment of the men was at that camp?

A. The treatment of the men at the camp as far as I saw them they treated me first rate and they all got treated the same way.

Q. Did you see the difficulty between Maginnis and Mr. Gallagher?

A. Yes, sir.

Q. State to the jury what you know about that?

429 A. When I first came down here—this Maginnis he was a ruffian all the way down and he wanted to try and bully everybody, and so when we come down here he says he would not sleep with any Polarks and Hungarians or anything like that. So Mr. Gallagher says to him—he says I will treat all of you boys alike and he went away

complaining, mumbling something to himself, and he turned around and made a kick at Mr. Gallagher, and says you are a sun of a bitch like that, so Mr. Gallagher did not say nothing, he says he was going and have supper and treat all alike and do the best we can with you.

Q. Just tell all that happened?

A. So he made a kick at Mr. Gallagher and Mr. Gallagher came back and made a kick at him and called him a sun of a bitch, and he got down on his knees and says I will be good, I will be good, so he worked there for awhile and he was bulldozing everybody.

Q. Now, you say he was a ruffian on the way down; what do you mean by that?

A. On board he was fighting with everybody. He would get hold of you and pull you around something like that.

Q. He came down on the same trip with you?

A. Yes, sir.

Q. When did this difficulty take place; how soon after you arrived there?

A. The same day we arrived there.

Q. Did you see the difficulty between Mr. Gallagher and the Bulgarian?

A. No, sir.

430 Cross Examination.

Q. You are working up there yet?

A. Yes, sir.

Q. You came down with Maginnis and that crowd?

A. Yes, sir.

Q. How long have you been acquainted with Maginnis?

A. I was not acquainted with him at all.

Q. You had not been a pal of Maginnis'?

A. No, sir.

Q. You say he was a bluffer and was running around grabbing hold of the boys and cutting up generally?

A. Yes, sir.

Q. When did he get down there—when he got there the first night he did not want to sleep with the Polarks?

A. He would not sleep with the Polarks, Hungarians or anything like it.

Q. Then how did he come to kick at Gallagher—just because he said that?

A. He was all that way bulldozing everybody and he went up to Mr. Gallagher and says he would not sleep with any Polarks.

Q. And without Gallagher saying anything to him—

A. Or anything at all he kicked at him and called him a sun of a bitch.

Q. And Gallagher had not said anything to him or anything of that kind?

A. No, sir. Mr. Gallagher, the only words I heard him say was we will try and make you as comfortable as we can.

Q. Did he make him very comfortable right after that?

A. Yes, sir; he got the same as I did.

Q. I mean about that particular time; what occurred right after he kicked him—after Maginnis kicked at

431 Gallagher?

A. Maginnis got down on his knees and says I will be a good boy.

Q. What did he do with his hands; did he hold up his hands?

A. He says I will be good—that is all.

Q. Gallagher had not done anything towards him at all?

A. No, sir.

Q. He just dropped down on his knees and says I will be good.

A. Yes, sir.

Q. Gallagher had not done anything?

A. No, sir.

Q. And did not do anything and says I will do the best I can for you?

A. That is what I heard.

Q. And that is all you saw?

A. Yes, sir.

Re-Direct Examination.

Q. Did you see Mr. Gallagher have a pistol there?

A. Yes, sir.

Q. Tell the jury what he did with the pistol?

A. Well, when Gallagher and him had the row Mr. Gallagher fired two or three shots alongside of him.

Re-Cross Examination.

Q. Mr. Gallagher had not kicked at him?

A. No, sir.

432 Q. He had not cussed at him?

A. No, sir.

Q. He did not call him any son of a bitch?

A. No, sir.

Q. Why did you not tell that just now when you were on the stand, that you saw Gallagher fire three shots when I asked you if Gallagher had done anything?

A. You did not ask me if he shot.

Q. You did not want to tell that?

A. I told everything I knowed.

Thereupon the defendants called as a witness A. SCHULEMAN, who having been duly sworn, testified as follows.

Direct Examination.

Q. What is your name?

A. A. Schuleman.

Q. Where do you live?

A. A mile this side of Laurel Hill.

Q. Do you know Mr. Gallagher?

A. Yes, sir.

Q. Do you remember seeing Mr. Gallagher and two foreigners about the twenty-first of July?

A. Yes, sir; I seen him, Mr. Gallagher and somebody else with him and two foreigners.

Q. You do not know the other men?

A. No, sir.

433 Q. And two foreigners?

A. Yes, sir.

Q. Where did you see them?

A. Right there to my place; they drove up to my place.

Q. Was anybody else with them at the time?

A. No, sir.

Q. Did you see Mr. Atwell?

A. No, sir.

Q. What direction were they traveling?

A. When they started from my place they started towards Laurel Hill.

Q. What took place there at your house?

A. They all got out of the buggy and got water and took out the horse and put him in my lot and give the horse water.

Q. What did you see these foreigners do, if anything?

A. Nothing. they took the horse out and got water and they got water themselves out of the well.

Q. Did you see either one of them tied?

A. No, sir.

Q. Or have any ropes or straps around him in any way?

A. No, sir.

Q. Did you hear Mr. Gallagher or either of the other men order them around?

A. Have not heard any conversation at all.

Q. How long were they at your place?

A. Just long enough to get water and long enough for them to get water.

Q. How long was that?

A. Five minutes.

Q. Did anybody guard these foreigners while they were there?

A. No, sir.

434 Q. Did they follow them around?

A. No, sir.

Q. Did they appear to be in the custody of anybody?

A. Not as I know of. I did not know anything about that. I thought they was altogether riding somewheres for some business.

Q. You never saw anything there to indicate that they were being held being compelled to go?

A. No, sir; not a thing in the world.

Q. And they left your house and went in the direction of Laurel Hill?

A. Yes, sir.

Q. When they got back in the buggy did you see any straps or ropes placed on them?

A. No, sir.

Cross Examination.

Q. What is your nationality?

A. I am a Jew.

Q Do you live within a mile of Laurel Hill?

A. Yes, sir.

Q. What makes you think this was about the twenty-first of July?

A. I did not say exactly. I say it was on Saturday. I did not give the dates.

Q. You do not know what day of the month it was?

A. No, sir.

Q. Do you know what month it was?

A. I expect it was in July.

435 Q. You are swearing to what you expect?

A. Well, I swear it was on Saturday.

Q. But you do not know whether it was August or July or June?

A. No, sir.

Q. What sort of looking men were these two foreigners?

A. I cannot remember because I did not notice them closely.

Q. Where did they stop?

A. They drove up right to the well. I was in the commissary.

Q. Where is your well located?

A. About twenty-five yards from the commissary.

Q. Did you go out of the commissary at all?

A. Right on the front porch.

Q. For what purpose?

A. Just went out—I did not have anything to do.

Q. Is that your commissary?

A. Yes, sir.

Q. You just walked out to see this man?

A. Yes, sir.

Q. Did you know the men at the time?

A. I knew Mr. Gallagher—he was the only one I knew.

Q. And there were two others besides him?

A. Three with him.

Q. I mean besides the two foreigners, how many other men with him?

A. Just one more.

Q. Do you know Mr. Grace. Did you see either one of these parties with him?

A. No, sir; I know none but Gallagher.

Q. You cannot recognize the other man?

A. No, sir.

436 Q. They stopped in about twenty-five yards of your house?

A. Yes, sir.

Q. Was there any fence between the commissary and the buggy?

A. No, sir.

Q. It was right open?

A. Yes, sir.

Q. Where was the well?

A. It was right there by the lot.

Q. Did they have to take the horse out to get to the well?

A. They took the horse out to put him in the lot to get water out of the trough.

Q. Did both of these men leave the buggy?

A. Yes, sir.

Q. Gallagher and the other man?

A. They all left the buggy. They all went for water.

Q. The two foreigners?

A. They went and drew the water first.

Q. Did these men go along about the same time?

A. No, sir.

Q. How far was the well from the buggy?

A. The buggy was between the well—half way between the well and the commissary.

Q. That was not more than twenty-five feet from the men at the time—from the well to where the buggy stopped?

A. About thirty-seven and a half feet.

Q. Is that in good close pistol range?

A. Yes, sir.

Q. How long had the men gone and got water before these other men, Gallagher and the other man, went?

A. Just went in. The two foreigners went after water and then Mr. Gallagher went after water.

437 Q. You did not go to the buggy at any time?

A. No, sir.

Q. Were you there and looking at them all the time they were taking out the horse?

A. Yes, sir.

Q. Which way did they go when they left you?

A. Over to Laurel Hill.

Q. Were they driving two or one horse?

A. One horse.

Q. What size; what color?

A. If I ain't mistaken it was a sorrel horse.

Q. What kind of a buggy was it?

A. One-seated buggy.

Q. Where was the main part of the buggy—in front or behind the seat?

A. Really I could not tell you.

Q. You did not pay much attention?

A. I paid no attention to the buggy.

Q. You cannot describe the buggy?

A. No, sir. I think it was a kind of back buggy.

Q. One that came right up to the seat behind?

A. Yes, sir.

Q. Where were the men sitting?

A. Sitting behind.

Q. On the back of the buggy?

A. Yes, sir.

Q. Both of them?

A. Yes, sir.

Q. Was anything with this buggy—any dogs?

438 A. There was two dogs—one small dog and one large dog; they appeared to me to be bulldogs.

Q. Did they stay about the buggy?

A. No, sir; they was running around.

Q. Where was the pistol—on the seat of the buggy?

A. I have not seen any.

Q. Did Gallagher get out and go to the well?

A. Yes, sir.

Q. What did they have buckled around them?

A. Have not seen anything about them.

Q. Did they have on coats?

A. Yes, sir.

Q. Did these foreigners have on coats?

A. Yes, sir.

Q. Now, you were looking pretty closely and carefully around there and you cannot say what kind of men they were?

A. No, sir.

Q. You do not know whether one was taller or a short, stocky man with a red beard and the other was smooth-faced man, younger than the other?

A. I cannot swear to that.

Q. You were not observing very closely?

A. No, sir.

Q. You did not ask any questions?

A. No, sir.

Q. You did not ask them where they was carrying them?

A. No, sir.

Q. You had no conversation?

A. No, sir.

Q. With Gallagher or anybody else?

A. No, sir.

439

Re-Direct Examination.

Q. When they left your place do you remember whether both men were sitting behind or whether one man got up in the seat and one got behind?

A. According to my best recollection they was both behind.

Q. When they left your place?

A. Yes, sir.

Thereupon the defendants to maintain the issues in their behalf called as a witness one SAM T. ROSS, who having been duly sworn, testified as follows:

Direct Examination.

Q. Where have you been working, Mr. Ross?

A. For the Jackson Lumber Company.

Q. When did you go to work for the company?

A. June twenty-sixth.

Q. Where did you come from before you went to work for them?

A. New York City.

Q. Did you come out alone or with a crowd?

A. With a crowd.

Q. What camp were you employed at?

A. At the log camp.

Q. What kind of work did you do at the log camp?

A. Mostly railroading.

Q. Where did you sleep at?

A. In the camp cars.

Q. Did you sleep in the cars with the other men?

A. Yes, sir.

440 Q. Did any foreigners sleep in the car that you occupied?

A. Yes, sir.

Q. About how many foreigners?

A. I could not tell, probably half.

Q. Was there a watchman at that camp?

A. Yes, sir.

Q. What was his name?

A. Louis.

Q. What were the duties of the watchman; what did he do?

A. His chief duty was to blow the whistle in the morning for us to get up and go to work, and he also made the fires in the engine and made the fire at times in the dining car.

Q. Did he guard the men in the cars at night to keep them from going off—from going in and out?

A. I never seen it.

Q. You slept right there in the cars?

A. I did.

Q. Did you ever see any of the men in the car where you slept prevented from going in and out as they pleased?

A. No, sir.

Q. Did the men go in and out at night or not?

A. Whenever they felt inclined they would go.

Q. How far away from the camp would they go?

A. As far as they felt like; sometimes down to the village.

Q. What village?

A. Florala.

Q. How would they go to Florala, walk or ride?

A. Sometimes they would walk and sometimes they would ride.

Q. What did they ride on?

A. Rode on the engine.

441 Q. What time did the engine leave the camp?

A. Well, the engine generally pulled out of there at quitting time at night when the men got there.

Q. When would they return?

A. Well, some would return the next morning and some two or three days afterwards.

Q. Was there any difference as to that liberty made between the foreigners and the other men?

A. None whatever.

Q. When did the men go to Florala and Lockhart mostly; what night of the week?

A. On pay night—when they drew their checks.

Q. What night was that?

A. Saturday night.

Q. Was any pass required before you could go up to Lockhart?

A. No, sir.

Q. What was the treatment of the men at the camp?

A. Very good. They had whatever they wanted. They had whenever they were sick medical attention.

Q. Did you see the difficulty between Mr. Gallagher and Maginnis?

A. I was there at the last of it?

Q. Did you see the beginning of it?

A. No, sir.

Q. You do not know what it was about?

A. No, sir.

Q. Did you see the difficulty between Mr. Gallagher and the Bulgarian?

A. Part of it.

Q. Where were you at the time?

442 A. I was standing—I was in the dining car.

Q. Now, do you know anything about any stealing there in July or about that time?

A. Yes, sir.

Q. Do you know whether about that time an extra watchman was placed on duty?

A. I heard at that time that there was to be an extra watchman to be put on.

Q. For how long?

A. Until they discovered the thief.

Cross Examination.

Q. Didn't you hear that this watchman was to have other things to do, too, about that time?

A. No, sir.

Q. When was this?

A. About the time of the stealing in the car.

Q. What time of year was that?

A. I think the latter part of July.

Q. Now, what was your job up there?

A. I worked on the railroad.

Q. How many of the Hungarians did you know personally?

A. Well, I know all that worked with me.

Q. Did you know Laninger?

A. No.

Q. Did you know Mihaley?

A. I have seen him there.

Q. Did you know the Hungarian?

A. Yes, sir.

443 Q. Do you know what time he left there first?

A. No, I do not.

Q. Do you know what time he was brought back?

A. I never heard of his leaving or being brought back.

Q. You are more familiar with the habits of the men going to Florala and back. Where were they paid off?

A. In Lockhart.

Q. Then what did they go to Florala for?

A. They went from Lockhart to Florala after they got paid off.

Q. How far was that?

A. About a mile.

Q. It is about five miles from the camps up to Lockhart to start on?

A. One way it is and one way it is not.

Q. That is the foot way?

A. The foot way and the railroad.

Q. How long did you sleep in those cars down with the Hungarians?

A. About four and a half months.

Q. You came out with Maginnis and his crowd?

A. No, sir.

Q. What crew did you come with? When did you land there?

A. I landed there June twenty-sixth.

Q. You did not know Maginnis?

A. Yes, sir; I have seen him.

Q. You knew him before he left New York?

A. No, sir.

Q. What was your name in New York?

A. Samuel T. Ross.

[Q.] The same name you go by now?

444 A. Yes, sir.

Q. How long did you live in New York?

A. All my life.

Q. What did you come down to the Jackson Lumber Company to do?

A. To work.

Q. What kind of work?

A. As a laborer.

Q. Now, you say you never saw anybody that had to have a pass to go to Lockhart and back?

A. No, sir.

Q. Did you hear something about it having to have a pass in the day time?

A. No, sir.

Q. And you never saw one of the bosses with a pistol?

A. Never have.

Q. Did you know Archie Bellinger?

A. I did.

Q. Did you know Gallagher?

A. I did.

Q. You knew him in July?

A. Yes, sir.

Q. What did Gallagher shoot the nigger with?

A. I never heard him shoot a nigger.

Q. Didn't you hear two or three shots and you looked and inquired and found that Gallagher had gone and shot at a nigger there?

A. I heard two shots. I did not know that Mr. Gallagher shot them.

Q. What did you see?

A. I seen afterwards.

Q. How long did you see him after the gun shots you heard?

445 A. I was coming from the end of the cars.

Q. It was very soon after—what was the nigger doing when you saw him?

A. I do not know what nigger you have reference to.

Q. How many niggers did he shoot at around there during the month of July?

A. I never seen him shoot at any.

Q. What were the three shots fired at and for what purpose?

A. I do not know.

Q. You did not make any inquiry?

A. I did not.

Q. Didn't you testify here a week or two weeks ago?

A. Yes, sir.

Q. Didn't you state then what these three shots were fired at?

A. I did not.

Q. That they were shot at a nigger?

A. No, sir.

Q. You are certain of that?

A. Yes, sir.

Q. How far were you away from the shots that you heard?

A. The distance of the last car to the front car.

Q. Was it day time or night?

A. I think it was in the evening.

Q. Then it was day light, was it?

A. Well, just getting dusk, I believe.

Q. Was there anything that prevented you from seeing where the shooting was and who was shooting and what the purpose of the shooting was?

A. Not any if I was looking at it.

446 Q. You did not look at it?

A. No, sir. My attention was attracted when I heard the shots.

Q. Was that shooting because somebody wanted to go on the train?

A. I do not believe so; I did not hear it.

Q. In fact you did not feel interested enough to inquire what the shooting was in your presence; didn't interest you, is that a fact?

A. No.

Thereupon the defendants to maintain the issues in their behalf called as a witness one HUGH McEARCHEN, who having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?

A. Hugh McEarchen.

Q. Have you been working for the Jackson Lumber Company?

A. Yes, sir; I have worked there for three years.

Q. What work did you do for them?

A. I have been cooking at the log camp?

Q. Do you know whether they had a watchman at that camp or not?

A. Well, until a year ago they never had a watchman.

Q. What was the watchman's name?

A. The only watchman they ever had was Louis May.

Q. What were his duties?

447 A. Just to keep the engines fired up and to wake me every morning.

Q. Did he guard the men in the cars at night to prevent them from leaving the cars?

A. He never did.

Q. Did you sleep in the cars with the men?

A. No, I slept in the kitchen.

Q. During the time you were there did you know of any men being prevented from going in and out of the cars at night when they pleased?

A. No, sir.

Q. Where did the men go at night?

A. Well, the men that worked there would go in on the engine when the work was done.

Q. Where would they go on the engine?

A. Go to Lockhart.

Q. And when would they return?

A. For breakfast in the morning on the same train.

Q. Was there any difference made between the foreigners and the other men at that camp?

A. I never saw any distinction.

Q. They were all treated alike?

A. Everybody was treated alike.

Q. What was the treatment of the men at that camp?

A. I never heard or seen anybody make any trouble while I was there three years.

Q. You did not see the difficulty between Gallagher and Maginnis?

A. No, sir; I was not there at the time.

448 Q. Did you see the trouble between Gallagher and the Bulgarian?

A. No, I do not think I did.

Q. You were not there in the month of July?

A. No, sir.

Q. You were away on a vacation?

A. Yes, sir.

Cross Examination.

Q. What have you to do with the distinction of the men you are testifying to; you have nothing to do with them except the cooking?

A. I have charge of every man on the works; they have to eat sometime or other.

Q. You do not follow them in the woods?

A. No, sir.

Q. You do not come back with them from the woods?

A. No, sir.

Q. You do not watch the cars at night, do you?

A. No.

Q. When did you first find out that you were coming down here as a witness?

A. I could not say. It might have been fifteen days ago, and I don't believe I was ever told.

Q. Have you been talking with Bob or Archie—you know them all?

A. No, Bob never talked to me; they came voluntarily to me.

Q. Did they eat at your table?

A. Everybody eats at my table.

Q. You had a good many dogs up there last week. Have you got as many there now?

449 A. Got a few more.

Q. There was ten thousand there then, I believe you said?

A. I have seen some more strange dogs there since then.

Re-Direct Examination.

Q. You said you knew Mr. Gallagher and Mr. Bellinger?

A. Yes, sir.

Q. Do you know their general reputation for peace and quietude and kindness to humanity?

A. I have never seen—

Q. I asked you first if you knew their reputation?

A. I know their reputation.

Q. What is it, good or bad?

A. I have never seen anything bad about them.

Q. Answer my question, is it good or bad?

A. Good.

Re-Cross Examination.

Q. Did you hear about Bob and the Bulgarian fighting in the car?

A. Yes, sir.

Q. Did you hear that Bob had kicked him pretty badly?

A. Well, I heard about the bugs eating him in the woods.

Q. You did not hear that Bob had put in on the Bulgarian?

A. I did not hear anything of the sort. I do not believe Bob would beat the Bulgarian.

450 Q. Do you know about Bob and Dr. Grace bringing back a fellow?

A. I read something about it.

Q. You did not see it?

A. Certainly not. I was down here. I was fishing.

Q. Do you know Arthur Buckley. Didn't he work around your kitchen awhile. Who was it that beat him and whipped him?

A. I seen Buckley here this morning.

Q. Answer my question. Didn't you hear about Gallagher and Archie whipping Buckley?

A. Just what Buckley told me.

Q. Did you know one Herman Osmenski. Was he not around your kitchen there?

A. No.

Q. You never heard of Squarehead; you never heard about the boys whipping him?

A. No, sir.

Q. Did you hear about Bob shooting the nigger down at the camps for wanting to ride on the train?

A. No, sir.

Q. You did not hear the gun, even the report of the gun?

A. I certainly could not hear when I was not there. I was in Pensacola.

Q. You heard about it when you got back?

A. I have read the papers and have heard a whole lot of trash.

Q. You and Bob are pretty good friends?

A. I do not know. I come down here the same as those people done. I came down to work for Bob from Marinet, Wisconsin. Sent down the same as they were.

Q. And you are closer to Bob than a brother?

A. I don't know.

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Thereupon the defendants called as a witness one PAT MURPHY, who having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?

A. Pat Murphy.

Q. Have you been employed by the Jackson Lumber Company?

A. Yes, sir.

Q. How long did you work for them?

A. I worked for them until the 26th of October.

Q. When did you begin working for them?

A. On the third of July.

Q. Where did you come from when you went to work for them?

A. New York.

Q. What camp did you work at?

A. I was sawing timber.

Q. At the logging camp?

A. Yes, sir.

Q. Where did you sleep?

A. In the logging camp.

Q. In the cars?

A. Yes, sir.

Q. Did anybody else sleep in the same car with you?

A. Yes, sir.

Q. Who?

A. Mahoney slept with me in the car.

Q. Did any other men sleep in the car?

A. A number of men slept in the car. There was two in each bed.

Q. Do you know whether they had a watchman at the camp?

A. Yes, sir.

452 Q. What was his name?

A. Louis.

Q. What were the duties of the watchman?

A. Was to look over the engines at night time and fire them up and have steam for the morning.

Q. Did you ever see him guarding the men in the cars?

A. No.

Q. Did you ever see him prevent men from going in and out of the cars at night?

A. No, sir.

Q. Do you know whether the men had the privilege of going in and out of the cars at night?

A. I could.

Q. How about the other people?

A. I guess they were the same.

Q. Did you see them go?

A. Yes, sir.

Q. Where did they go?

A. To Lockhart and to Florala or any place where they pleased.

Q. How did they go—walk or ride?

A. Owing to the time; when there was an engine going down in the evening at six fifteen and if not you could come down by the road.

Q. Did you require any pass to go on that engine?

A. I never did.

Q. Did you ever see anybody else have a pass?

A. No, I never did.

Q. Did you know how men were treated at that camp?

A. Yes, sir.

Q. How were they treated?

A. As far as I was concerned they was treated all right.

Q. How about the other men?

453 A. They was treated the same as I was.

Q. Do you know anything about any stealing there in July or about that time?

A. No.

Q. You do not know anything about that?

A. No.

Q. Did you hear of it?

A. I heard of it.

Q. About that time did you know whether there was an extra watchman placed on duty or not?

A. No extra watchman, I saw a watchman around the car.

Q. Who was that?

A. I know him by the name of Big Harry.

Q. How long was he on there?

A. I took notice for only one night.

Q. That was about the time you heard of this stealing?

A. Yes, sir.

Q. Did any foreigners sleep in the car with you?

A. Yes, sir.

Q. Was there any difference made there between the foreigners and the other men?

A. Not that I know of.

Q. Was there any difference made about their going to Lockhart and Florala?

A. Not that I know of. Anybody that wanted to go could go as far as I know.

Q. Did you see the difficulty between Gallagher and the fellow called Maginnis?

A. No, sir.

454 Q. Did you come down with Maginnis?

A. Yes, sir.

Q. You are not working for the company now?

A. No.

Q. Where are you working now?

A. L. & N. R. R. Co., here in Pensacola.

Cross Examination.

Q. How long have you been working for the L. & N. R. R. Company?

A. I come on Sunday evening and went to work Tuesday morning.

Q. Last Sunday evening?

A. No, in October.

Q. You left there the 26th of October?

A. About the 26th or the 27th.

Q. You say you saw the men going and coming from the camps up to Lockhart?

A. Yes, sir.

Q. How many times?

A. Any time I wanted to.

Q. That is to yourself?

A. Yes, sir.

Q. Did you go with anybody?

A. No.

Q. Do you know where they were going?

A. I know that I could walk out of camp any time they wanted to.

Q. You could?

A. Or anybody else.

455 [Q.] How many Hungarians?

A. I do not know whether they was Hungarians or anything else.

Q. You did not go up to Lockhart and talk with any of them?

A. No.

Q. How many times did you go up to Lockhart while you were there in July?

A. I guess I was there twice in the month of July.

Q. Did you go on the train or walk?

A. I walked.

Q. You footed it?

A. Yes, sir.

Q. Why did you foot it?

A. Simply because I missed the train the second night and the first night I went down by the engine going down to bring logs out.

Q. How many went with you when you footed it?

A. Four of us.

Q. What time in July was that?

A. That I cannot tell you.

Q. You do not know whether it was July or August.

A. It was in July.

Q. What makes you think it was in July?

A. It was about the second week that I was there that I went down.

Q. You came down here before the court—you was not brought down here as a witness?

A. No, I brought myself down.

Q. Who went to see you where you were at work?

A. Nobody.

Q. How did you come to get up here week before last?

A. Been working here for the last few weeks.

456 Q. I am talking about your coming to Court here last week?

A. Yes, sir.

Q. You was not brought down here from Lockhart, was you?

A. No, sir.

Q. Who went down after you to the wharf?

A. Nobody.

Q. Did you hear about the Court?

A. Yes, sir.

Q. Did you think you would be needed up here?

A. They told me whether I would or not.

Q. How did you know that court was going on?

A. I saw it in the papers.

Q. Is that what lead you to come up here and look into it? Who told you to come up here?

A. Nobody; my own self.

Q. Something appeared to you; some inspiration appeared to you. You did not have any summons or paper?

A. No.

Q. Was it the first day up here last week or the week before that you were taking drinks?

A. I had one drink about two o'clock in the evening.

Q. Have you had any since then with Mr. Gallagher?

A. What I have don't cost anybody else anything.

Q. I just wanted to find out if you had been hitting it since?

A. That is what I work for.

Q. You work for drinks?

A. To pay my own way.

Q. Have you had any today?

A. I have.

Q. Who set them up?

A. I did.

457 Q. Who did you set them up for?

A. Myself and another friend of mine.

Q. Mahoney?

A. No.

Q. Talbott?

A. No.

Q. That other friend is up here with you, ain't he?

A. Not that I know of.

Q. You did not do the setting up last week?

A. No.

Q. Who set them up then?

A. Talbott and I set them up after that.

Q. Was Bob present?

A. He was only present on one occasion.

Q. You say that you saw Big Harry when he went on there about the time of the stealing was reported?

A. Yes, sir.

Q. You purported to tell us what Big Harry was doing. What was he doing around there?

A. I saw him around there watching.

Q. What was it that he had—a revolver or a pistol?

A. I called it a gun.

Q. One of these little short guns?

A. No, sir.

Q. What kind of a gun?

A. About that high.

Q. One that shoots lots of times?

A. One that shoots one time.

Q. Did he have it in his hands or on his shoulder when he was walking around?

A. In his hand.

458 Q. Did he have a lantern?

A. No.

Q. You did not stay at that car?

A. No.

Q. How did you come to be seeing him down at another place when you slept at another place?

A. Fifty yards away.

Q. Who was watching you all when Big Harry was down at the other car?

A. Nobody on watch for me.

Q. Who was looking around the cars?

A. The watchman.

Q. What sort of a gun did he have?

A. None that I know of.

Q. How many times did you see him go in and out of the car?

A. I never did see him take notice.

Q. What did you quit for?

A. On my own accord.

Q. You did?

A. Yes.

Q. Anybody fall out with you?

A. No.

Q. Did you see any of the boys whipped while you were there?

A. No.

Q. Do you know Buckley?

A. Yes.

Q. Do you know Squarehead?

A. Yes.

Q. Do you know where they worked?

A. They worked at the same camp.

459 Q. Did you see Squarehead corrected up there one time?

A. No.

Q. When was the first time you heard that you would be needed up here?

A. The first time I came up here.

Q. A few days before that you heard you would be needed?

A. No.

Q. How long before?

A. I been working every day and worked every day since.

Q. You just happened to strike up this way and fell in?

A. I have been asked.

Q. Who asked you to come up here?

A. I was asked to come up here and tell how I was treated.

Q. Who asked you to come up here, Bob?

A. No.

Q. Well, who?

A. I was talking to—

Q. Any of these fellows that you were drinking with?

A. No.

Q. You do not remember?

A. I forget now.

Q. Do you know Harry Myers?

(No answer.)

Re-Direct Examination.

Q. You do not remember the name of the man who told you to come up here?

A. No.

460 Q. He told you to come up here that you were wanted as a witness, but you do not know his name?

A. No.

Thereupon the defendants called as a witness one ROSS NOWELL, who having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?

A. Ross Nowell.

Q. Have you worked for the Jackson Lumber Company at any time this year?

A. Yes, sir.

Q. How long did you work for them?

A. About a month.

Q. When was that?

A. That was from the latter part of June until the latter part of July.

Q. Where did you come from when you went to work for them?

A. New York.

Q. Did you come out with one of the parties of men?

A. Yes, sir.

Q. What camp were you employed in?

A. Camp number one, they call it the log camp.

Q. Where did you sleep at?

A. In the cars.

Q. Did you sleep in the cars with any foreigners?

A. Yes, sir.

461 Q. Did they have a watchman at that camp?

A. Yes, sir.

Q. What was his name?

A. I do not know.

Q. Do you know what his duties were and what he did?

A. As far as I could see it was to make fire in the engine and see that everything was going on regular around the camp and wake the cook up in the morning.

Q. Did you ever see him guarding the men in the cars at night?

A. No, sir.

Q. Did you ever see him stop or prevent the men from going in and out of the cars at night?

A. No, sir.

Q. Did you see any restrictions placed on the men there about going back and forth at night?

A. None that I ever heard of.

Q. While you were there, did you see men going away from the camp at night?

A. I don't think they left the camp; they had free will to go anywhere. I went anywhere I wanted to.

Q. Do you know of any of them going to Lockhart and Florala?

A. I saw them coming in at all times of night.

Q. How would they go to Lockhart?

A. On the train if they wanted to and some would walk.

Q. They would come in you say at all hours of the night?

A. Yes, sir.

Q. Did you see any difference or distinction made between the foreigners and the other men as to their liberty?

A. No, sir.

Q. What was the treatment of the men at that camp?

A. I think it was very good; much better than I expected when I got there.

462 Q. You stayed there about a month?

A. Yes, sir.

Q. What was the occasion of your leaving?

A. I was sick.

Q. When you left were you in debt to the company or not?

A. Yes, sir; I should say that I was for transportation. I worked about ten and a half days.

Q. Did anybody undertake to stop you when you left?

A. No, sir.

Q. Did you tell anybody that you were going?

A. Yes, sir.

Q. Who did you tell?

A. Mr. Gallagher and the bookkeeper, Mr. Porter.

Q. What conversation did you have with Mr. Gallagher about your leaving?

A. I told him that I was sick and needed medical attention; that I could not get there and I did not think I would be able to work and I stayed there about a week and I was getting worse all the time, and he told be he reckoned I had better go away where I could get better.

Q. So you left?

A. Yes, sir.

Q. Now, did you work for the company any more after that time?

A. Yes, sir; I worked in the saw mill for them at Lockhart—some brick work on the oilers there.

Q. Did you get paid for that?

A. Yes, sir.

Q. They did not deduct that from what you owed them?

A. No, sir. I saw Mr. Gallagher several times in Florala and he never made any complaint about my being away or going away or anything about it.

463 Q. Where are you at work now?

A. In the city here, when I am able.

Cross Examination.

Q. You had a peculiar sort of ailment that you could not get treated there?

A. Yes, sir.

Q. Didn't they have a doctor up there?

A. Yes, sir.

Q. What wages were you getting?

A. I never was there. I never received any wages from them—I never worked for any.

Q. You did work around there?

A. Yes, sir.

Q. You were one of the crowd brought down from New York?

A. Yes, sir.

Q. Do you know whether you were taxed for a doctor's fee?

A. I do not. I never received any wages. Never had any settlement with the company.

Q. Did you promise them that you would come back when you got able?

A. No, sir.

Q. How long, in fact, were you there?

A. I do not [know] exactly.

Q. But it was the latter part of July you went there?

A. Or the first of August when I left there.

464 Q. When did you go there?

A. I left New York on the 21st of June.

Q. And you left there about the first of August?

A. Yes, sir.

Q. About the time you heard of this matter down here, when they were all coming down here to court?

A. I did not hear anything about this until long after I got here.

Q. You do not know when that occurred here?

A. No, sir.

Q. You never saw any difference in the treatment of the men; they went and come as they wanted to?

A. Yes, sir.

Q. How often did you see the men leave there to go to Lockhart after night?

A. Very nearly every Saturday night that they could raise money.

Q. What time would they come back?

A. All times of the night.

Q. How come you to be staying awake seeing them?

A. I did not stay awake. They would come in and wake up anybody.

Q. You had not been with them?

A. No, sir.

Q. How do you know where they came from?

A. They said so.

Q. Now, did you ever go with them on any of these trips?

A. No, sir.

Q. How did you go and come when you went?

A. On the train.

Q. Did you ever hear of anybody being prohibited from going on that train?

465 A. Not until about the last—just before I left there.

Q. Why was that?

A. I heard that they would not let anybody ride on the train during work hours, but I went down on it.

Q. Between six in the morning and six in the evening?

A. Yes, sir.

Q. There was no regular train at night; they did not haul logs at night?

A. No, sir.

Q. So that if anybody wanted to go they would have to walk?

A. They could get a pass if they got permission to go.

Q. They gave passes to certain ones?

A. I never saw a pass.

Q. Why did you say they would go and get a pass and go? Tell us why you stated that if you did not know that they were giving passes?

A. I said I heard that they were.

Q. What was the negro prevented from doing; what was he shot at for?

A. He was told not to get on the train.

Q. Were you there then?

A. I was.

Q. Did you see it?

A. Yes, sir.

Q. Who shot at him?
A. Mr. Gallagher.
Q. How many times?
A. I could not tell you the number of shots.
466 Q. Several times Mr. Gallagher was carrying a revolver then?
A. Yes, sir.
Q. Now, as a matter of fact, did you know Archie Bellinger?
A. Yes, sir.
Q. Did you know Big Harry?
A. Yes, sir.
Q. Didn't they carry revolvers every day?
A. I have never seen Big Harry with a revolver.
Q. Who was it that you did see with a revolver besides Bob?
A. It was Mr. Gallagher and Mr. Bellinger.
Q. Mr. Angelo?
A. No, sir.
Q. Mr. Fagan?
A. No, sir.
Q. Only those two?
A. Yes, sir.
Q. Did you testify here week before last?
A. Yes, sir.
Q. Didn't you say all the bosses carried revolvers?
A. I can only swear that Gallagher and Archie.
Q. Did you see Big Harry when he was watching the cars?
A. No, sir.
Q. Which string of cars did you sleep it?
A. The second car from the office.
Q. Who watched that car?
A. The same man that watched all of them, a tall young fellow.
Q. Louis May?
A. I do not know his name. The cook slept in the car and he came in every morning and waked him up.

467 Re-Direct Examination.

Q. They had a doctor there?
A. Yes, sir.
Q. You stated that you were sick. Is it not a fact that the disease which you had was such that the doctor could not attend to it?

A. That is what he said.

Q. You spoke of the passage—you heard that they were not permitted to ride on the train during work hours. Did that apply to the train that went up at night after six o'clock?

A. No, sir; I did not understand it that way. The way I understood it was there was so many laying around the camp every day they stopped them from riding on the trains during working hours unless they had some business there.

Q. That did not apply after working hours?

A. No, sir. On the Saturday evening train that was run down anybody who choose to go went on it.

Cross Examination.

Q. You say that was the reason why they had to have passes was because they did not want them to quit and go during working hours?

A. That is the way I understood it.

Q. Didn't you understand, too, that the men were running away from camp and they did not want them to leave?

A. I understood the men were leaving there every day and the company wanted all the hands they could get.

468 Q. The company wanted to keep its hands?

A. Yes, sir.

Q. Did you also understand that they had advanced the transportation and brought these men down from New York?

A. I knew that they had paid mine and I expected to work to pay it.

Q But you did not work it out?

A. No, sir.

Q. What have you been doing since you were here two weeks ago?

A. I have been laying brick when I was able.

Thereupon the defendants called as a witness one WILLIAM EDGE, who having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?
A. William Edge.
Q. Have you worked for the Jackson Lumber Company during this year, Mr. Edge?
A. Yes, sir.
Q. How long have you worked for them?
A. I worked somewhere about two and a half years.
Q. When did you leave their employment?
A. June of this year.
Q. What position did you hold?
A. I was foreman of the track.
469 Q. What time in June did you leave?
A. As well as I remember about the thirteenth of June; somewheres about that.
Q. Did your duties take you around the logging camp?
A. Yes, sir; I was around the camp right smart.
Q. Were you there or had you left there before the foreigners came out from New York?
A. There was some had come before I left.
Q. Did you sleep at the camp at night?
A. No, sir.
Q. Where did you stay at?
A. At Lockhart.
Q. Do you know what the treatment of the men at the camp was?
A. As far as the board it was good.
Q. I mean the treatment of them.
A. They were treated kind as far as I know.
Q. You say you worked some of them yourself?
A. Yes, sir.
Q. What was the occasion of your leaving there, Mr. Edge?
A. I just could not get along.
Q. Why could you not get along with them?
A. I could not explain anything to them, they could not [talk] to me and the boys just could not do the work.
Q. You mean the foreigners?
A. Yes, sir.
Q. You could not understand them nor them you?

A. No, sir.

Q. So you gave up your employment?

A. Yes, sir.

Q. Do you know the general reputation of Mr. Gallagher
and Mr. Bellinger among the men employed in that
470 camp being law-abiding citizens, kind and human in
their treatment of the men?

A. Yes, sir.

Q. Is it good or bad?

A. It is good.

Q. Where are you working now?

A. I am working at Mossy Head on the P. & A. road.

Q. You went back and forth at night on the train, did you?

A. Yes, sir.

Q. Do you know whether the other men at the logging camp who stayed down there went back and forth or not?

A. On the train at night?

Q. Yes, sir.

A. Yes, sir; always a load went and come.

Q. What did they go up there for?

A. I could not tell you.

Q. Do you not know what they went up there for?

A. No, sir; like I was living in Lockhart.

Q. I do not men those that were living at Lockhart. I mean the others who stayed at the logging camp. Did you see them going back and forth?

A. Yes, sir.

Q. The foreigners as well as the others?

A. Yes, sir.

Q. Was there any restriction placed on them in that regard—going back and forth to Lockhart and Florala?

A. None that I know of.

Q. Do you know anything about a pass being required?

A. Yes, sir.

Q. When was that?

A. The way that was on the noon train.

471 Q. That was during working hours?

A. Yes, sir.

Q. Was any pass required after work hours?

A. No, sir.

Q. Do you know how long that order has been in effect about the pass during working hours?

A. No, sir; I do not know.

Q. Do you know whether it was in effect before the foreigners came from New York or not?

A. Yes, sir.

Q. How long had it been in effect before that?

A. I do not know.

Q. Well, as near as you can get at it?

A. It must have been six or eight months.

Cross Examination.

Q. What were your duties when you were there?

A. Building railroad work on the track.

Q. What sort of men did you have under you?

A. For a long time I worked colored men.

Q. You could not understand them and they could not understand you?

A. Yes, sir.

Q. Sure it was not for that reason you quit, was it?

A. It was not for the colored men. It was the others.

Q. When did you commence to take the other crowd?

A. It was sometime in May.

Q. That was before the Hungarians and all the New York crowd came down there, was it not?

472 A. No, sir.

Q. Were you there when they came?

A. I was there when the first lot of them came in.

Q. When did they come in?

A. Some time in May, as well as I remember about it.

Q. Now, you left there when?

A. June.

Q. You quit work there in June?

A. Yes, sir.

Q. You were not there in July at all working for the company at the camps?

A. No, sir.

Q. Then how do you know what the pass regulations were in the month of July, what kind of people were allowed to go and come. You do not know anything about the regulations of the company or passes at the camp in July, do you?

A. No, sir; I was not there in July.

Q. Now, was there not another reason, Mr. Edge, as a matter of fact, why you quit the company's employ?

A. No, sir.

Q. Have you never told anybody any other reason? Did you ever have any difficulty with Mr. Gallagher?

A. No, sir.

Q. Do you know Mr. Bargonier?

A. Yes, sir.

Q. You are pretty intimately acquainted with him?

A. Yes, sir; I have been with him for the past two or three months.

Q. Do you remember within that time that you had some conversation with him about this business up there when you left there and what was going on there in the camps
473 before you left? Answer the question.

Counsel for the defendants did then and there object to the question unless the time and place be laid.

Q. Now, I will ask you this question which does not need any predicate. Have you not stated to others that the reason you left there was on account of the treatment of the men by these bosses?

But counsel for the defendants did then and there object to the said question upon the ground that the time and place was not stated, and the only purpose was to impeach the witness.

But the Court did then and there overrule said objection.

To which ruling of the Court the defendants did then and there except.

Q. Now answer the question. You seem to be a man of average intelligence. Have you not stated to others or to anybody that the main reason why you left there was on account of the fact that you could not stand to see the men treated like these were?

A. No, sir. If I have I do not remember it.

Q. You did not make in substance that statement to Mr. Bargonier?

A. No, sir.

Q. And you left there before July?

A. Yes, sir.

Q. Now, you are a special friend of Mr. Gallagher's? You and Bob were good friends all the while?

A. Yes, sir; we got along all right.

Q. Who have you heard discuss his treatment of the men;

474 who have you been talking to. You say his general reputation is good. Who have you been talking to about it. Have you ever discussed it with anybody?

A. No, sir.

Q. Is it not a fact that this was your private opinion of Mr. Gallagher and not what you heard others say? You do not know? Well, you can come down.

Re-Direct Examination.

Q. Did I understand you to say you had worked some foreigners for awhile after they came down in May?

A. Yes, sir.

Q. About how long did you have the gang of foreigners?

A. Three or four weeks.

Q. And you could not understand them nor they could not understand you?

A. No, sir.

Q. So you left?

A. Yes, sir.

Q. Did you ever have any orders to mistreat them because they could not understand you?

A. No, sir.

Q. Were they ever mistreated on that account because they could not understand?

A. Not that I know of.

475

Re-Cross Examination.

Q. Do you know of any of them being whipped while being worked by you?

A. No, sir. I know none were whipped while being worked by me or under me.

Q. Do you know whether anybody else did?

A. I do not know. Not that I know of.

Q. Was not your orders to make them work whether they knew—they understood you or not?

A. No, sir. My orders was to get what I could out of them.

Thereupon the defendants called as a witness one CHAS. HAAFMER, who having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?

A. Chas. Haafmer.

Q. Are you in the employ of the Jackson Lumber Company?

A. Yes, sir.

Q. How long have you been at work for that company?

A. Since May twentieth.

Q. What sort of work did you do?

A. I worked two weeks on the railroad out at the camp and four weeks in the mill and then two weeks sawing logs and then three months chore boy at the camp.

Q. You are still working for the Jackson Lumber Company?

A. Yes, sir.

476 Q. Where did you sleep?

A. In the summer I slept in the cars.

Q. At the log camp?

A. Yes, sir.

Q. Well, did you ever see any men guarding the cars at the log camp?

A. Louis May was the watchman.

Q. What was his work?

A. He was watching the stable and the cars and lighting the fire in the engine.

Q. Did Louis May Have a pistol or a gun?

A. No, I did not see any.

Q. Did you ever see him watching the men to keep them from leaving the cars?

A. No.

Q. Could you leave the cars at night whenever you wanted to?

A. Yes, sir.

Q. Did you, as a matter of fact, ever leave the cars at night?

A. Yes, sir.

Q. Where would you go?

A. Florala and Lockhart.

Q. How would you go?

A. On the engine.

Q. Did anybody else ever go with you?

A. Yes, sir.

Q. Can you remember anybody that ever went with you?

A. Frank Smith and German fellows that worked out there.

Q. Are you a German?

A. Yes, sir.

477 Q. These men that went with you from the cars on the train to Lockhart, were they workmen or bosses?

A. Workmen.

Q. Did you ever see any one stopped who wished to leave the cars at night?

A. No.

Q. Then, as I understand you, you and the other workmen who slept in those cars could go and come whenever you wanted to at night?

A. Yes, sir.

Q. Did you ever see any other watchman except Louis May guarding those cars?

A. No.

Q. Do you remember when you became chore boy?

A. It was about the twentieth of July.

Q. Now, what was your work as chore boy; what did you have to do as chore boy?

A. Supplied the wood for the kitchen, sawed wood for the kitchen and took water into the kitchen and make beds in the cars.

Q. Then you did not work in the woods as chore boy?

A. No.

Q. You were around the cars all day?

A. If I sawed wood for the kitchen I was out in the woods.

Q. You were in and about the cars all day?

A. Yes, sir.

Q. Did you ever see anybody whipped while you were there at the camp?

A. No, sir.

478 Q. Did anybody ever complain to you of any ill treatment or did you ever hear them talk of any ill treatment?

A. No. I could not speak good English.

Cross Examination.

Q. When did you start in as chore boy?

A. The middle of July.

Q. Was Arthur Buckley there then?

A. I do not know him.

Q. Do you know Squarehead?

A. No.

Q. He was one German too. Do you know Herman?

A. I do not know any names.

Q. Do you know a little fat Italian boy there with black eyes?

A. I see him sometimes.

Q. You never saw him hit with anything?

A. No.

Q. Was he carrying water; what did he do?

A. I saw him working on the engine as fireman.

Q. Well, do you know Mr. Bellinger?

A. Yes, sir.

Q. Was he a boss around there?

A. Yes, sir.

Q. You never did see him whip anybody?

A. No, sir.

Q. What did he carry a gun for?

A. I never saw a gun.

Q. You never saw the gun that he showed to Arthur Buckley?

A. No, sir.

479 Q. Never did point it out to Arthur Buckley and call his attention to it?

A. No, sir.

Q. Do you know of any of the boys being brought back there going off and coming back—any of the boys running away?

A. I do not know any of the boys run away.

Q. At night while Louis May was watching there?

A. I went to sleep at night.

Q. And waked up the next morning?

A. Yes, sir.

Q. You did not see what Louis May did while you were asleep?

A. No, sir.

Q. How many times did you go to Lockhart after night in the month of July?

A. Every Saturday.

Q. Were you paid off every Saturday?

A. I could get money at office.

Q. Every Saturday?

A. Yes, sir.

Q. When was pay day?

A. Saturday after the 12th every month.

Q. Then they paid off once a month?

A. You can draw checks and get money at the office—down at Lockhart and get money for the checks.

Q. Pass in your checks and get money?

A. Yes, sir.

Q. Do you get as much money as you had checks. If your check calls for five dollars would you get that much money when you passed in the check, or did they take something out of it?

480 A. Get four dollars and fifty cents.

Q. Then if you draw your money before pay day you could not get all of your money?

A. I got my money.

Q. They paid off once a month?

A. If I draw money I draw it every Saturday.

Q. And for five dollar checks you get four dollars and fifty cents?

A. Yes, sir.

Q. Where did you work, out in the woods in the camp?

A. Saw logs two weeks.

Q. Who stayed with you. Name somebody who worked with you?

A. His name was Bill.

Q. When did you come down here to court; you was not in town here week before last?

A. No, sir; I came down here yesterday.

But to the question and answer of the witness the defendants' counsel did then and there object, which objection was overruled by the Court. To which ruling of the Court the defendants did then and there object.

Q. You came down with the witnesses that came down last night?

A. Yes, sir.

Q. When were you first informed that you were needed down here; how long ago?

A. Sunday.

Q. That was the first time you heard you were coming?

A. Yes, sir.

Q. Were you asked what you knew; were you told what to say when you got down here?

A. No, sir; say I have to come down.

481

Thereupon the defendants called as a witness one FRANK FLECK, who having been duly sworn, testified as follows:

Direct Examination.

Q. Are you employed by the Jackson Lumber Company?

A. Yes, sir.

Q. What is the nature of your work?

A. Working out in the woods for awhile and working in the kitchen.

Q. When did you start to work in the kitchen?

A. Worked in the kitchen about the second week after I got there.

Q. Are you still woreking for the company?

A. Yes, sir.

Q. What is the nature of your work now?

A. Swamping.

Q. Where did you sleep?

A. At the cars.

Q. In the logging camp?

A. Yes, sir.

Q. Have you ever seen a man around those cars guarding the men?

A. No, sir.

Q. Have they a watchman there?

A. Yes, sir.

Q. What is his name?

A. Louis May.

Q. What are his duties?

A. I do not know what he got to do. He got to watch the cars and make fires on the engine in the morning.

Q. Did you ever seen him with a gun?

A. No, sir.

482 Q. Did the men, the workmen who lived in those cars, have the right to leave the cars after night fall?

A. Yes, sir; if they wanted to.

Q. After work hours?

A. If they want to.

Q. Where did they go?

A. Go to town if they please or walk around.

Q. Have you ever seen any attempt made to prevent them?

A. No, sir.

Q. Have you ever left the cars yourself after work hours?

A. Yes, sir.

Q. Where did you go?

A. Lockhart.

Q. How did you go?

A. Usually went in on the engine.

Q. Did you ever hear, or did you ever know of any requirement of the company requiring a pass for workingmen to go from the camp to Lockhart?

A. No, sir.

Q. You never heard of such a thing?

A. No, sir.

Q. Was there any distinction made by the company between the foreign workmen and the native workmen?

A. None that I know of.

Q. What is your nationality?

A. I was born in New York.

Q. Have you ever gone with other workmen from the camp after working hours to Lockhart or elsewhere?

A. Yes, sir.

Q. Do you remember any that you have gone with?

A. Yes, sir.

483 Q. Who?

A. Carl Hoff.

Q. Who else?

A. Chas. Devough.

Q. Any one else?

A. William Harvey.

Q. They are ordinary laborers at the camp?

A. Yes, sir.

Q. On the occasions that you speak of when you would leave the cars and go to Lockhart or elsewhere, did any of the bosses accompany you?

A. No, sir.

Q. Did any one employed by the company accompany you to keep guard over the workmen?

A. No, sir.

Q. Then, as I understand it, you and the other workmen as far as your observation went, had a right to leave the cars and go where they pleased after working hours and there was no watchman or guards that went with them?

A. Yes, sir.

Q. Did you ever see any one whipped or ill treated at that camp?

A. The only case I saw was Maginnis.

Q. You saw the Maginnis case, then?

A. Yes, sir.

Q. Where were you at the time Maginnis and Gallagher had the trouble?

A. Standing around the cars.

Q. Were you near enough to see and hear what went on?

A. Yes, sir.

484 Q. State—tell the jury what you saw and heard?

A. Maginnis came there during July and after he had been there an hour or two he asked Mr. Gallagher where he was going to sleep and Mr. Gallagher showed him one of the cars where he should go, and he went and looked and said he would not sleep there, because there was some Polarks in there, and he started to talking about the place, and Mr. Gallagher happened to hear him and he told him to keep quiet, and he would not do it, and he started to fussing around there and laid his hat and coat off and started into fighting and kicking, and Mr. Gallagher got back at him and after awhile he got down on his knees and said if he—

Q. What did he do then?

A. He took his pistol and fired three shots.

Q. He did not fire them at this boy?

A. No, sir.

Q. And then what did he tell him in regard to being a good boy?

A. If he would be a good boy he would treat him right as he treats all the other men.

Q. Did you hear Maginnis curse Mr. Gallagher?

A. I heard him say a couple of swear words around there.

Cross Examination.

Q. The Maginnis fight was all that you saw?

A. Yes, sir.

Q. Did you know Arthur Buckley?

A. Yes, sir.

Q. Did you know Squarehead?

A. Yes, sir.

485 Q. You never saw either one of them whipped?

A. No, sir.

Q. How long did you work around the kitchen?

A. For two weeks.

Q. Then where did you go?

A. Out to the woods.

Q. Were you there in July?

A. Out in the woods in July.

Q. You were?

A. Yes, sir.

Q. Were you at the camps each day at noon while you were in the woods?

A. Come in for dinner.

Q. Now, the only man you ever saw Gallagher fight with or do anything to was Maginnis?

A. Yes, sir.

Q. Were you there the day that Gallagher and the Bulgarian had the difficulty?

A. No, sir.

Q. Where was you?

A. I was at the camp, I guess; but I did not see anything of it.

Q. And you did not hear anything of it?

A. No, sir.

Q. And you were there every day during July?

A. Yes, sir.

Q. Did you ever see the Bulgarian?

A. I remember him.

Q. Were you here two weeks ago in court?

A. No, sir; I come down here last Tuesday to Pensacola.

Q. Tomorrow a week ago?

A. Yes, sir.

486 Q. Did you hear anybody testify then, where you are now?

A. No, sir.

Q. Was you not back in the court room two or three days during the trial?

A. No, sir; in here about a half an hour.

Q. Who was here on the stand then?

A. No one on the stand then; just had sworn in all the witnesses and then I was called over to be sworn.

Q. That was the first time you were down?

A. Yes, sir.

Q. You had the liberty to go and come when you pleased?

A. Yes, sir.

Q. On the train?

A. Yes, sir.

Q. What was Gallagher shooting at the negro for if it was for wanting to ride on the train?

A. He did not shoot him.

Q. You did not hear about that?

A. No, sir.

Q. You did not hear the gun shot?

A. No, sir.

Q. How often did you go to Lockhart at night?

A. Two or three times a month; Saturday nights mostly.

Q. And these three boys that you named were the only ones that you remember as ever having gone up there with you?

A. Yes, sir.

Q. What time did you get back?

A. Sometimes go back on Saturday night and other times would come back Sunday night on the engine.

487 Q. They did not run the log trains on Sunday?

A. Run them back in the afternoon if any one—

Q. Then it did not come down from Lockhart every morning before six o'clock?

A. There was one engine that come in from Lockhart every Monday morning—come in every morning to bring the men in to the woods.

Q. Have you talked to these boys here as witnesses last week and the week before?

A. Have been with them, but nothing about the case, though.

Q. You came all the way down from Lockhart with them?

A. I came from Lockhart last Tuesday.

Q. And you have been here ever since?

A. Yes, sir.

Q. You have not been away?

A. No, sir.

Q. You did not hear about the Bulgarian affair?

A. No, sir.

Q. Can you remember whether you took dinner at the camp every day during July?

A. Mostly every day.

Q. How many days in the month of July were you away from there?

A. I do not remember any days in July, but there was other days.

Q. Do you know when a big crowd of Hungarians came down here. Do you know John Smith and all that crowd?

A. No, sir.

Q. Do you know Albert Danish, a Hungarian?

A. No, sir.

488 Q. Do you know when a big crowd arrived there about the seventeenth or the eighteenth of July?

A. I do not remember. I remember a bunch that came on the second or the third of July.

Q. Then you were not there about the seventeenth or the eighteenth?

A. Yes, sir; but I do not remember a bunch coming at that time. There was several bunches that came.

Q. Did you eat dinner at the camp [with] the second crowd, the second day of July?

A. I think I did.

Re-Direct Examination.

Q. As I understood, in reply to a question from the district attorney, you said that these men whom you went to Lockhart with were the only ones you knew who went to Lockhart?

A. Yes, sir.

Q. You mean by that they were the only ones that you knew personally or the only ones you saw on the train?

A. I mean they were the only ones that went with me.

Q. As a matter of fact, you testified, didn't you, that the laborers came and went as they pleased after night fall?

A. Yes, sir.

Q. Did you hear anything about any stealing at the camp while you were up there?

A. I heard something about it.

Q. Just tell the jury what you heard about it?

A. I heard that there was some clothes stolen there and the next day they got them back—they heard that a fellow by the name of—they called him Whitey and Stoney—took them and they got them fellows and asked them whether they took them or not and they returned— 489

By Counsel for Government:

Q. Were you present when all this was being done?

A. No, sir; I heard about it.

By Counsel for defendanss:

Q. Do you know anything about any extra watchman put on at the camp while this stealing was going on?

A. No, sir.

Thereupon the defendants called as a witness one CHAS. COLLINS, who having been duly sworn, testified as follows, to-wit:

Direct Examination.

Q. Where are you employed and where have you been employed?

A. By the Jackson Lumber Company.

Q. What kind of work did you do for the Jackson Lumber Company?

A. I have done several kinds of work for them.

Q. What kind of work were you doing for them in July?

A. I was yard man.

Q. Where did you sleep?

A. In the cars.

Q. Do you know whether they had a watchman at the logging camp?

A. Yes, sir.

Q. What was his name?

490 A. Louis May.

Q. What did you see him doing; what were his duties?

A. His duties principally was to look after the engines, fire them up in the morning, wake the crew up, see that there was no fires, look after the horses, see that none got sick.

Q. Was it a part of his duty to guard the men in the cars and prevent them from going in and out at nights?

A. No, sir.

Q. Did you ever see Louis May or any other man guarding the men in the cars?

A. No. sir.

Q. Did you ever see Louis May or any other man preventing the men in the cars from going back and forth at night?

A. No, sir.

Q. As a matter of fact did they go back and forth at night?

A. They did.

Q. Where did they go?

A. Lockhart or wherever they wished, I believe.

Q. How did they go?

A. Sometimes on the train; sometimes walked.

Q. What time did the last train leave the logging camp going to Lockhart?

A. Six fifteen, I believe.

Q. Was there any pass required of the men to go on that train?

A. Not that I know of.

Q. Did you yourself go back and forth?

A. Yes, sir.

Q. Do you know anything about a pass being required of the men during working hours?

491 A. Not that I know of.

Q. Did you know of any difference being made between the foreign workmen and others?

A. Never did.

Q. Do you know what the treatment of the men was at that camp?

A. Yes, sir.

Q. What was it?

A. Good.

Q. Did you see the difficulty between Gallagher and Maginnis?

A. I saw part of it.

Q. Well, tell the jury what you saw?

A. I saw Mr. Gallagher come down there. Mr. Gallagher told him to go in and sleep in this car and he said this car was not good enough for him and Mr. Gallagher told him he could sleep in that car or get out, and Maginnis called Mr. Gallagher a dirty Irish son of a bitch—

Q. What happened then?

A. Mr. Gallagher gave him a slap the best I can remember.

Q. Did you see the finish of it?

A. Yes, sir; that was all about all there was to it.

Q. Did you see Mr. Gallagher fire off some shots?

A. Yes, sir; I believe I did. I seen him fire two shots.

Q. Do you know whether Mr. Gallagher took off his coat?

A. No, sir; he did not.

Q. Did you see the difficulty between Mr. Gallagher and the Bulgarian?

A. No, sir.

Q. Do you know what the general reputation of Mr. Gallagher and Mr. Bellinger is for being law-abiding citizens or for kind and humane treatment of the men and employees in that camp?

492 A. I do.

Q. Is it good or bad?

A. It is good.

Cross-Examination.

Q. How much of a man was Maginnis?
A. Thirty-five or forty years.
Q. He was a boy?
A. About thirty years of age.
Q. You are a pretty good judge of people's looks?
A. No.
Q. Where did you take your meals at dinner time in the month of July?
A. At the log camp.
Q. You never heard of the Bulgarian episode, where he beat and knocked Gallagher down in the car in the office?
A. No, sir.
Q. Now, you say that Gallagher only slapped Maginnis?
A. Yes, sir.
Q. Didn't he kick at him?
A. Not that I saw.
Q. But he did shoot at him?
A. He shot off on the side, not at the Bulgarian.
Q. We are talking about Maginnis?
A. That is what I say, Maginnis.
Q. He only kicked the Bulgarian?
A. I do not know. I never saw that.
Q. Was anybody behind Bob when he fired off the gun?
A. No, sir; I do not think so.

493 Q. So when he kicked at Maginnis, Bob, he drew the gun behind him and fired off. Did he look back to see whether there was anybody in range of the gun going off behind him?
A. He just took and fired off at the side.
Q. What was the attitude of Maginnis at the time that was going on; what was Maginnis doing?
A. He said he would be good.
Q. I am asking you what he was doing?
A. He was not doing much of anything.
Q. Was he not on his knees?
A. No, sir.
Q. When did he get on his knees?
A. I did not see him on his knees.
Q. You were not there?
A. I was.
Q. You did not see all of it?
A. I thought I did.
Q. There was a good many others there?

A. Quite a crowd.

Q. Did you turn your back on it?

A. No, sir.

Q. You say this gentleman enjoyed a splendid reputation, good, kind-hearted fellow among the employees?

A. That is his reputation.

Q. Who have you heard talk about it?

A. Everybody.

Q. Name some of them?

A. Take Florala for instance.

Q. Is there a man by that name?

494 A. The town of Florala.

Q. You have heard everybody in Florala?

A. Several of the merchants.

Q. About the way he treated the men in the camp?

A. Yes, sir.

Q. What did they know about it?

A. They visited the camps.

Q. They had not been up there when the Maginnis incident occurred?

A. I do not know.

Q. Did you ever hear them talking about the Bulgarian incident?

A. No, sir.

Q. Did you ever hear anybody talking about Bellinger holding a boy named Squarehead and Gallagher putting it on?

A. No, sir.

Q. You never heard that discussed in Florala?

A. No, sir.

Q. Can you name me some of the gentlemen who were discussing about how kind and good Gallagher and Bellinger was to the employees in the town of Florala?

A. Yes, sir.

Q. Who?

A. Mr. Lowry, a dry goods merchant; Mr. McDougall, druggist.

Q. You cannot think of any more now? How did you come to go to McDougall's and Lowry's and inquire about this?

A. I did not go to them.

Q. How came the subject to be up?

A. I dropped in to buy a big handkerchief and a pair of sox.

Q. When?

A. Long during July and August.

495 Q. Did you go there purposely to get up this conversation.

A. No, sir.

Q. How much of your time did you spend in the camp there ?

A. About twenty-four hours out of each day and night.

Q. I thought you were a boss and had something to do in the woods?

A. That is in the camps.

Q. If you had any work anywhere else how do you spend twenty-four hours in the camp?

A. When I say camp I mean the whole business.

Q. How far off from the camps does your work go?

A. Sometimes a mile and sometimes two miles.

Q. You do not know what is going on when you are away?

A. No, sir.

Q. You never saw Squarehead?

A. No, sir.

Q. Nor Arthur Buckley?

A. No, sir.

Q. Nor Charley Haas?

A. No, sir.

Q. Were you there when Trulich Mihaley was brought back?

A. I was there all the summer.

Q. You never heard that discussed by any Florala merchants, did you?

A. No, sir.

Q. You are a boss there; how long have you been a boss?

A. Going on two years.

Q. And you have been working men in the woods?

A. Yes, sir.

Q. Now, those men, a good many of them, are like Maginnis, were they, kind of stubborn and resentful?

496 A. I do not know anything about that.

Q. How about your crowd in the woods?

A. They were satisfactory to me. If they were not I would not have them there.

Q. How many did you ever turn away?

A. I never turned any away.

Q. Did you work Hungarians?

A. Yes, sir.

Q. Why did you carry a gun?

A. I never owned a gun.

Q. Did you see the other bosses carrying any guns?

A. Never have.

Q. And you were there every day, at least once a day?

A. Yes, sir.

Q. And while you were there you were working for the company?

A. Yes, sir.

Q. When did you come down there to go to work?

A. I came from Marinet, Wisconsin.

Q. You knew Gallagher before you ever came down there, didn't you?

A. Yes, sir.

Q. You were an old friend of his in Wisconsin?

A. No, sir; not any friend of his.

Q. Did you work for him up there?

A. No, sir.

Q. Now, did you read the paper along in the month of July when you were there at the camp?

A. Occasionally.

Q. Do you know whether there was a paper being published at Florala or not?

497 A. Yes, sir; I believe there is.

Q. Did you read that during the month of July and August?

A. No, sir.

Q. You did not see the articles that occurred in that paper in relation to the treatment of the men in the camp?

A. No, sir.

Q. You never heard of it?

A. No, sir.

Thereupon the defendants called as a witness one BEN VAN HORN, who, having been duly sworn, testified as follows, to-wit:

Direct Examination.

Q. Where are you employed?

A. Laurel Hill.

Q. Employed by whom?

A. Dr. Craig.

Q. Dr. Craig has a drug store at Laurel Hill?

A. Yes, sir.

Q Do you know Mr. Gallagher when you see him?

A. I do now; yes, sir.

Q. Did you see Mr. Gallagher on or about the twenty-first day of July passing through Laurel Hill in a buggy with three other men in the buggy with him?

A. I seen him, but I don't know what day.

498 Q. But you do remember his passing there, do you?

A. Yes, sir.

Q. Do you know either one of the other three men?

A. No, sir.

Q. How were they sitting in that buggy?

A. Three in front and one behind.

Q. Where were you standing when they passed?

A. In the door of the drug store.

Q. They passed along in front of the store?

A. Yes, sir.

Q. Which way were they going?

A. Going north.

Q. Will you state whether these men were tied or strapped in that buggy?

A. I do not think they were.

Q. Did you see them?

A. Yes, sir.

Q. Did you see any straps or any ropes of any kind around them or about them?

A. No, sir.

Q. If they had been strapped or tied would you not have noticed it?

A. I believe I would.

Q. Why would you have noticed it?

A. Because it would have been an uncommon thing.

Q. Did you notice anything uncommon about these men in the buggy—anything unusual about it?

A. No, sir; only that two were foreigners.

Q. Did you notice any dogs along with them?

A. Yes, sir.

499 Q. What kind of dogs were they?

A. Bull dogs, I think.

Cross Examination.

Q. Do you know anybody else in the country that had such looking dogs?

A. No, sir.

Q. Do you know where they belonged?

A. No, sir.

Q. Did you ever see them with anybody except these two men?

A. No, sir.

Q. Did you see them before that day?

A. No, sir.

Q. Did you see these same parties passing down that way—coming south that way?

A. Yes, sir.

Q. Did they have any dogs with them then?

A. Yes, sir.

Q. The same dogs?

A. Yes, sir; I think so.

Q. Did they stop in Laurel Hill when they went back?

A. Going down they did.

Q. What for?

A. I do not know.

Q. They did not speak to you?

A. No, sir.

Q. How many were in the buggy then?

A. Two.

Q. You only knew Gallagher?

A. I know him now.

500 Q. Was he one of the men?

A. I think so.

Q. Was either one of these other parties with him?

A. No, sir; I would not recognize him.

Q. Where did they stop on the way back?

A. I do not think they stopped; I did not see them stop.

Q. Do you know where Stokes' store is?

A. Yes, sir.

Q. How far is your place from that?

A. About a block and a half.

Q. The road they traveled would pass by Stokes'?

A. Yes, sir; one way.

Q. And by Rhodes' soda fountain; is that as close to you or closer?

A. No, sir; if they went by Stokes'—

Q. You say they were going north; what direction would that lead them to—what town?

A. Florala.

Q. How far were they from you when you saw them passing?

A. About fifty feet or more.

Q. Have you got streets there?

A. Yes, sir.

Q. Were they in the street?

A. Yes, sir.

Q. How were they traveling?

A. In a buggy.

Q. I mean what gate?

A. Trotting.

Q. Were both men sitting behind?

A. No, sir.

501 Q. How were they sitting?

A. One in front and one behind.

Q. How was the man in front sitting?

A. I never noticed him.

Q. How was the man behind sitting?

A. In the body of the buggy.

Q. On the back of the seat? Did the seat go right up to the back of the buggy?

A. No, sir. The buggy body came out beyond the seat and he sat on that.

Q. How did you come to notice the one sitting behind and not notice the other?

A. I could see him better.

Q. Were you trying to recognize them, to see if they were people you knew; what was your object?

A. I just glanced out the door.

Q. I thought you were standing in the door?

A. I did not take much notice of them.

Q. You did not see any leather strap?

A. No, sir.

Q. Was the seat of the buggy pretty high seat; did it have a back to it?

A. I never noticed, but I think it was.

Q. From the inspection you gave it, you did not notice it much, could there have been a leather strap run from the back of the buggy seat down to the end of the buggy and you would not have noticed it?

A. Might have been, but I do not think there was.

Q. You are not certain about that?

A. No, sir.

502 Re-Direct Examination.

Q. And if there had been a strap you think you would have noticed it because it would have been uncommon?

A. I think so.

Re-Cross Examination.

Q. Had you seen any other men carried back that way?

A. No, sir.

Q. Before nor since?

A. No, sir.

Q. Have you seen Gallagher and another man passing down through there looking for such men?

A. No, sir; only that one time.

Thereupon the defendants called as a witness to maintain the issues in their behalf one W. R. STAFFORD, who, having been duly sworn, testified as follows:

Direct Examination.

Q. Where do you live?

A. At Mossy Head, my post office.

Q. Have you lived in Laurel Hill recently?

A. No, sir.

Q. Do you know Mr. Gallagher?

A. When I see him; yes, sir.

Q Were you in Laurel Hill about the twenty-first of July when Mr. Gallagher passed through there in a buggy with three men besides himself in the buggy with him? 503

A. Yes, sir.

Q. Where were you at the time?

A. I was at Mr. Morris' store.

Q. Did you see Mr Stokes there that day or Mr Rhodes?

A. Not that I remember.

Q. Did you see Mr. Gallagher and the men pass through there in a buggy?

A. Yes, sir.

Q. How close were you to them when they passed?

A. I was as close as from here to the far end of the room.

Q. How were they seated in the buggy?

A. Three men on the seat and one in the rear.

Q. Will you state whether you saw any ropes or straps around these men?

A. None that I seen.

Q. Do you think you would have seen them if there had been any straps or rope tied to them?

A. I think so, sir. They come riding through the town there.

Q. It was July, was it?

A. Yes, sir.

Q. And you saw nothing of the kind?

A. No, sir.

Re-Direct Examination.

Q. How was the man in the buggy behind sitting?

A. He was in the floor of the buggy in front.

Q. That is the only one you saw, the one in the floor in front?

A. Three in the seat and one in the floor.

504 Q. You did not see any man behind at all?

A. No, sir.

Re-Cross Examination.

Q. Do you know anything about these men losing some money?

A. Yes, sir; I met two going back ~~towards where~~ I was at work and they told me that they had lost some money and I had just found five dollars, and they could not speak my language, only one, and the one that lost the money could not speak my language, and this other one asked me if I had seen anything of it, and I told him I had found five dollars, and handed it to him and went on and met Mr. Gallagher just near Mr. Tiner's, him and another man, or two men, I disremember which, was in the buggy. I passed them as close as from here to there on the side of the road and he asked me where was the other two, and if I had met them and I told him they were going the other way when I met them.

Q. That was the two men you afterwards saw in the buggy?

A. Yes, sir.

Q. You say they come back through Laurel Hill. Are you quite sure that one man was sitting in the front of the buggy or sitting in the back of the buggy?

A. I wont swear to which way—whether in the front or on behind.

Q. You knew three were sitting in the seat?

A. Yes. sir.

505 Re-Cross Examination.

Q. How many men were there in the buggy?

A. Four.

Q. I understood you to say that three were on the seat and that one was sitting on the floor of the buggy?

A. Yes, sir.

Q. Then nobody was sitting in the rear of the buggy?

A. I say I wont swear which way it was.

Q. Why wont you swear it?

A. Because I do not remember.

Q. If you did not pay enough attention to know whether the man was sitting in front or behind how do you know whether he was strapped or not?

A. I saw how it was.

Q. You did not know until you had consulted with counsel. Are you prepared to swear whether one was not sitting behind the buggy strapped?

A. I will swear he was not sitting behind the buggy strapped.

Q. Where was he sitting?

A. He was not strapped.

Q. You are not certain whether he was behind or in front?

A. No, sir.

Q. If you cannot be certain about that how can you be certain about the other fact?

A. He was not strapped.

Q. Where is Rhodes' store?

A. I do not know.

Q. Were you a stranger in Laurel Hill.

A. Yes, sir.

Q. You do not know anybody living there.

A. Yes, sir.

506 Q. Do you know Julius Rhodes?

A. When I see him.

Q. Do you know where his store is?

A. No, sir.

Q. Do you know where Stokes' store is?

A. Yes, sir.

Q. How far were you from his place of business?

A. I do not know where Rhodes' is. Stokes' is, I suppose, 100 yards.

Q. Whose store were you at?

A. Mr. Campbell runs it.

Q. If this man went on towards Florala how close would they go to Stokes' store?

A. There are two roads there. You can go as close as from here to yonder to Stokes' store or not go close to his store.

Thereupon the defendants to maintain the issues in their behalf, called as a witness one CHAS. F. STEWART, who, having been duly sworn, testified as follows:

Direct Examination.

Q. What is your business?

A. Assistant circulating manager of the Pensacola Journal.

Q. Does your duties as such take you to the country?

A. Yes, sir.

Q. Did you ever have occasion to visit the camps of the Jackson Lumber Company?

507 A. Yes, sir.

Q. How often have you visited those camps?

A. Well, I have been there about once a month since—I do not think I went to the camp in April, but since then I have been there once a month.

Q. What was the occasion of your first visit, do you remember the time?

A. I do not know that I can exactly call the date. I can easily look it up and find out.

Q. I mean about the month of your first visit?

A. In May, I think. I would not say positive, but think it was in May.

Q. Now, on these visits did you see the men at the camp?

A. Yes, sir.

Q. How many of them did you see?

A. I saw all that was there.

Q. Did you see them at work?

A. I was all over the work.

Q. The logging camp?

A. Yes, sir.

Q. The turpentine camp?

A. Well, I was not all over the turpentine camp. I was at the commissary down there and at the stables and around there through a part of the woods, but I do not know that I was all over the woods.

Q. But you were all over the logging camp?

A. Yes, sir.

Q. And you talked with the men, Mr. Stewart?

A. Yes, sir.

Q. How did you find the conditions there?

508

Counsel for Government objected to question.

Q. You say you were among the men while they were working?

A. Yes, sir.

Q. And while they were at work?

A. Yes, sir.

Q. How did you see the bosses over them treat them while you were there, Mr. Stewart?

A. I do not know that I can recall of seeing but two bosses while I was there. One of them I met Mr. Gallagher at the cars when I first went there, and then when I was down in the woods going around from place to place—where I would hear the men cutting down trees and I ran up with Mr. Charley—who said he was foreman of the log sawyers. I met him and talked with him awhile, and if there were any other foremen in the woods I failed to see them.

Q. Did you meet Mr. Bellinger?

A. I could not say positively whether I did or not. I know a lot of people around there. I know their faces when I see them, but I could not call their names.

Q. You say you were among them; what was their treatment?

A. Just like any other men at work. Each one seemed to know what he was there to do and he went ahead and did it.

Q. Did you see any mistreatment on any of your trips up there?

A. Not a particle.

Q. Did you see any of the bosses have any pistols?

A. No, sir.

Q. Did you see any harshness or severity among the bosses?

A. No, sir.

Q. You say you have been there on an average of once a month since May?

509 A. Yes, sir. Understand I do not think I went to camp in May. I would not be positive, but think it was right about that time and I have been up to the mill every month since then, but the first time I went up I did not go to the camp—I think it was in May.

Q. In your conversations with the men did any of them make any complaint to you about any mistreatment?

A. No, sir.

Q. Was there anything that you saw that would indicate to you that these men were being held there against their will?

A. No, sir.

Q. There was nothing of that kind at all that you saw?

A. I did not see anything to indicate anything of that kind, because when I was at the camp I was there—on the first trip I went out there right after dinner and I worked that afternoon all around through the woods and the men all came that night for supper when the bell rang for supper. It was then summer time and they came up before sundown and we had supper—in fact I eat supper with some of the men and after supper there was, I should judge, twenty-five or thirty got on the engine and train together and we came on back to Lockhart.

Q. Twenty-five or thirty?

A. I should say somewhere in that neighborhood. The engine was covered and some on the cars—I should judge twenty-five or thirty.

Q. Where did they go?

A. They come down to the mill.

Q. Did you see anybody going up with them, have control of them, watching after them?

A. No, sir.

510 Q. Did the men seem to be happy and contented or not?

A. Yes, sir; seemed to be.

Q. You were taking subscriptions for your paper?

A. Yes, sir.

Q. From the men?

A. Yes, sir.

Q. Did you see anything there at all, Mr. Stewart, to indicate that the men did not have freedom?

A. No, sir; I did not.

Q. Did you ever hear anything?—

Counsel for Government objects.

Cross Examination.

Q. Were you up there after subscriptions or to get complaints?

A. For subscriptions, and after I began to get subscriptions I would go back every month to collect for them.

Q. Who did you collect from?

A. I can easily read you off a list.

Q. Who did the paying?

A. They did it.

Q. The different men?

A. Yes, sir; thirty-two or three.

Q. How many Hungarians did you get up there?

A. I could not say to that.

Q. Did you get any?

A. I do not know as I got any.

Q. When you were out in the woods?

A. I did two. I believe I wrote one or two that I judged to be Hungarians.

511 Q. How many men were in the camps at the time you were there?

A. I could not say positively. Looked like a good big crowd.

Q. When you were out in the woods did you go to the Hungarians and ask them if they had any complaints to make?

A. No, sir; but I went to every man out there.

Q. How did you make known your errand?

A. If I found they could not speak English I passed on.

Q. You found a good many that way?

A. No, sir; found a good many, too.

Q. Most of the subscriptions that you got up there and most of the men that patronized you were the bosses, were they not?

A. No, sir; not particularly the bosses.

Q. Who paid the subscriptions of these people anyhow, who did take the paper?

A. They paid it themselves.

Q. Out of their own pockets?

A. Yes, sir.

Q. They gave the money to you?

A. Yes, sir; with the exception of two—one give me a written order and one give me a verbal order.

Q. How much time were you in the camps when you would go up there on your monthly trips?

A. At least one day of the month.

Q. The whole day?

A. Not exactly the whole day.

Q. Did you loaf around the cars or where would you put in your time?

A. Anywhere where I could find men. Sometimes a mile from the camp and wherever I would hear a tree falling I would go to them. I would go to one crowd of men and canvass them and they would tell me you will find another crowd way down off yonder.

512 Q. You found the bosses extremely pleasant?

A. Yes, sir; nice as could be. I could not ask to be treated any nicer.

Q. And when you went to the camps you were hospitably treated there?

A. Yes, sir.

Q. And you naturally got a very good impression from the treatment you got yourself?

A. Yes, sir.

Q. Now, as to the treatment that the men got either in the day time or in the night time, what do you know as to that?

A. What I saw of it it was just like any other crowd of men at work.

Q. Is not most of it, what you acquired from Gallagher and Bellinger and the other bosses—have they not told you how the men were treated?

A. No, sir.

Q. Did you talk with any of the boys about their treatment?

A. No, sir; I do not know as I did particularly,

Q. Did you ever look up Arthur Buckley to ask him?

A. No, sir.

Q. Nor Squarehead?

A. No, sir.

Q. Nor Herman Osmenski?

A. I do not know them by that name.

Q. Do you know Chas. Haas?

A. Not that I can recall now.

Q. Did you ever talk to him about whether he was whipped or how he was treated? You never did hear of

513 that, did you?

A. I have heard of it.

Q. About Haas' particular case?

A. I do not know about that. I have heard about the rumors and what I saw in the papers.

Q. Did you ever have anybody to interpret between you and the Bulgarian?

A. No, sir.

Q. You had heard about it?

A. Not about that particular instance.

Q. Not a single one of the men that you did hear about being whipped did you ever go to to ask them anything about it?

A. No, sir.

Re-Direct Examination.

Q. Did you ever hear anything about it until you read it in the paper?

A. No, sir; that was the first I heard of it. After I had been there and worked the camps I went on north and I was somewhere at Hartford and I saw it in the paper.

Q. What paper was that?

A. In the Journal. When they sent me the papers I saw it in there and then on my trip back as I was coming back I stopped at Lockhart again, and was in Lockhart over a day or two around the mill, and, of course, after it come out in the papers I heard it discussed pro and con, first one way and then the other.

Q. I understood you to say there was some foreigners who could not speak English?

514 A. Yes, sir.

Q. But there was men among them that could talk English?

A. Yes, sir.

Q. And you did talk to them?

A. Yes, sir.

Q. Did you circulate freely among them?

A. I went to every one that I could find there.

Q. And talked to every man you could find who could speak English?

A. Yes, sir; because I was out looking for subscribers and

I did not want to miss [any] man that I thought I could get a subscription from.

Re-Cross Examination.

Q. What steps did you take to correct these reports in the Journal?

A. Which reports?

Q. About these conditions and about everything? When you came along by there didn't you go to investigate and have it contradicted in some way?

A. No, sir. That was no part of my business.

Thereupon the defendants to maintain the issues in their behalf called as a witness one WILLIAM F. REED, JR., who, having been duly sworn, testified as follows:

515

Direct Examination.

Q. What position do you hold with the Government?

A. United States Weather Bureau.

Q. Could you by consulting the records which you have in your hand tell me whether or not there was any moon on the night of the nineteenth of July of this year?

A. No, sir.

Q. That is here in Pensacola there was no moon shining?

A. No, sir.

Q. Can you state from your record, Mr. Wright, or knowledge whether or not at seven o'clock on the night that I have just mentioned it would have been dark?

A. Yes, sir; it would have been dark at that time.

Cross Examination.

Q. At what time did the sun set July nineteenth?

A. I would have to consult the table.

Q. Do you know there is a long twilight after sundown in July? When does it get dark?

A. It is dark—I cannot state the exact time it would get dark after the sun has set, but I should say from twenty to thirty minutes.

Q. After sun set?

A. Yes, sir.

Q. You mean to say you could not see anything fifteen or twenty or forty yards?

A. I could not state the distance.

516 Q. Don't you know as a matter of fact without your record that it does not get dark in July until eight o'clock or after?

A. No, sir. It gets dark before eight o'clock.

Q. Hadn't you better find out when the sun sets on the nineteenth of July?

A. I will go and get my records.

Q. Very well. When did the sun rise and set on the nineteenth of July?

A. I was mistaken about the sun set on the nineteenth of July in this altitude. The sun rose at five eleven and sets at seven one.

Q. Now, is that the actual set or apparent set from your observation?

A. There is some little difference in this and actual time.

Q. This is the theoretical time.

A. According to that it sets at seven one. By the table it sets a little sooner than that on account of obstruction from ten to twenty minutes. That is my observation. That the actual time of sun set and this table, that it varies from ten to twenty minutes; that is the sun sets from ten to twenty minutes earlier than the table gives.

Q. How do you get that out?

A. Owing to longitude and also to the obstruction of the horizon. This table is figured for a water surface.

Q. That is the set in the water?

A. The obscuration in this case would be due to forest and land surface.

Q. How much forest is there to obscure the sun set from your window? Where is the forest?

A. Trees on the horizon when the sun sets.

517 Q. That is the low forest along the shore?

A. My observation that is a slight—

Q. Another question I want to ask you. If the sun is not obscured, if it is a cloudless sky, how long is the twilight after the sun set in this latitude?

But to the asking of such question the counsel for the defendants did then and there object upon the ground that it is not in cross, and, secondly, that it is a hypothetical question not shown the conditions to be identical with those the counsel outlines. But the Court did then and there overrule such objection. To which ruling of the Court the defendants did then and there except.

Q. Now, upon a clear day, a clear afternoon, the nineteenth of July if it was a clear day how long would it be after sun set before it would be dark?

A. I should say from twenty to thirty minutes.

Q. Jet dark?

A. Yes, sir; in this latitude.

Re-Direct Examination.

Q. Let me understand. According to your theoretical table the sun sets one minute past seven?

A. Yes, sir.

Q. And as an actual fact it sets about ten to twenty minutes before that?

A. We have no record of the time of twilight for this altitude. That is the average time of light between sun set and darkness.

518 Q. I do not want to go into that again. I wanted to know if you said it would be dark ten to twenty minutes before one minute past seven?

A. Yes, sir.

Thereupon the defendants to maintain the issues in their behalf called as a witness one J. T. PENTON, who, having been duly sworn, testified as follows, to-wit;

Direct Examination.

Q. What is your name?

A. J. T. Penton.

Q. Where do you live?

A. Florala.

Q. How long have you lived there?

A. I lived there in July two years.

Q. Continuously?

A. Yes, sir.

Q. Were you in July along from the twelfth to the fifteenth of August last?

A. Yes, sir.

Q. Do you know a man by the name of William Albert?

A. Yes, sir.

Q. Did you hear any conversation between William Albert and the defendant, Robert Gallagher in Florala, any time about the time I have referred to?

A. Yes, sir.

Q. What was it?

519 A. Mr. Albert came up to Mr. Gallagher in my saloon and asked him for to lend him some money, ten dollars first and told him says Mr. Givens owes me fifty dollars and I will get that and give it to you, and says I will go out there and go to work, and I do not remember exactly all the conversation, but then he told him all right, he would let him have it. Mr. Gallagher says I will let you have it and you go and go out there in the morning and go to work, and he says all right, and he called me back to my desk and told me says give Will Albert ten dollars for me and I turned around to the safe and handed it to him and Albert told him says I will be there to-morrow morning and go to work sure, and he then turned around and went back to the bar and was standing there talking, and he come back in there and told Mr. Gallagher that he wanted some more money, five dollars more, and Mr. Gallagher told me to give him five dollars more, and I says I done sent my money to the bank, and I says I can give him a check, and he says all right, that will do, and that was in the morning, part of the day, about eleven o'clock, and I gave him that and he went on out and when he got to the door he says that he wanted a rig to go to Paxton and get his things and wanted Mr. Gallagher to 'phone Williams to let him have it, and Mr. Gallagher 'phoned William to let him have the rig and he would be good for it, and then he went on out, and in the afternoon he came back in there again and wanted some more money, and Mr. Gallagher run his hand in his pocket and gave him two or three dollars in small change, and told him to take that and go, and then when he gave me an order to Mr. Gallagher for the eighteen dollars and fifty cents that he owed me and Mr. Gallagher accepted it then and there and asked me to charge it to him and give Albert credit for it.

520 Q. Ater that did you see Albert in jail?

A. Yes, sir.

Q. Did you see Mr. Gallagher there?

A. Yes, sir.

Q. Did you hear any conversation between them?

A. Yes, sir.

Q. What was it?

A. He first sent for him to go around to the jail and asked me to go and get Mr. Gallagher to come and take him out and I told him I did not know whether Mr. Gallagher was in town or not, but as I come back from the jail I happened to meet Mr. Gallagher and told him that this fellow was around there in jail and he wanted him to take him out, and he says I don't know whether I will or not, and I says well, probably the fellow won't get into any more trouble, and will go on and go to work, and Mr. Gallagher and I went around there and Albert says if you will take me out I will go on out there and go to work and not cause any more trouble. He did not give him an answer or not as to what he would do, but when we got back around there I never paid any more attention to it, and the next I saw him he was out and come around in the saloon and got a drink and said he was going to work.

Q. Did you hear Mr. Gallagher say anything about not needing him?

A. Yes, sir; Mr. Gallagher says I do not know whether I need you or not, and he says you know that I am a good top loader.

Cross-Examination.

Q. How much interest did you have in that little transaction about this man going back to work for Gallagher?

521 A. I did not have any interest in it then.

Q. He did not owe you anything?

A. He had done give me an order for my money and Gallagher had accepted it.

Q. Do you know how that order was paid and what sort of arrangement was made between Mr. Gallagher and Albert for the payment of the order?

A. No, sir; he just asked me to pay it. Mr. Gallagher told me.

Q. What is your business, barkeeper?

A. Yes, sir.

Q. Where was your place of business?

A. In Florala.

Q. Where did you usually stay to perform your business and work?

A. Behind the counter.

Q. How was it you come to be present at the jail and everywhere if you were not interested?

A. He sent for me to come around to the jail.

Q. Who?

A. William Albert.

Q. Did you carry Gallagher with you?

A. Not when I first went there.

Q. Did you carry him the second time you went?

A. Yes, sir.

Q. This was eighteen dollars he owed you?

A. Yes, sir; eighteen dollars and fifty cents.

Q. How much was for whiskey?

A. All of it was for whiskey and beer.

Q. You did not know what his troubles were?

522 A. No, sir; I did not know what his trouble was; I did not know whether the city had him locked up or not.

Q. When did the last conversation take place?

A. He was in the jail.

Q. You and Gallagher were on the outside?

A. Yes, sir.

Q. What was said by Gallagher to this man—that if he would pay this debt and another and enter into a contract to work it out he would take him out of jail? Was not some negotiations entered into?

A. None that I saw or heard.

Q. Was that the day they carried him before the Court—Judge Johnson?

A. I do not know whether they carried him before the Court at all.

Q. Didn't you hear in that conversation at the jail there—didn't you know that it was understood between these parties that if Gallagher would pay your bill and pay his fine, whatever it was, that Albert would go back and work out the debt and would sign a contract to that effect?

A. I never heard anything of that sort.

Q. You are sure that was not discussed?

A. I had done got my money.

Q. Where was Momeke about that time?

A. Not that I know of.

Q. You did not see him?

A. No, sir.

Q. When did Albert disappear from Florala, that very day?

A. I do not know. I do not recollect. I did not pay any more attention to it.

523 Q. Your bill was paid?

A. Yes, sir.

Q. That was the only interest you had in it?

A. I did not have any interest after my bill was paid. What I was doing for him he asked me to do.

Q. And you carried him around there for Albert to see him?

A. I just asked him to go around. I did not carry him.

Q. You do not know how Albert left there, who he went with or anything about it?

A. No, sir.

Q. Nor where he went?

A. The next I saw of him he was out at the camp at work and the next I saw of him he was at the hotel sick with fever at Lockhart.

Q. Who else was present at the time you stood outside the jail and talked to him on the inside?

A. Nobody present.

Q. And you are certain you did not know of any Court proceeding right soon after that on the same day?

A. No, sir; I do not know whether he went before any court or not.

Q. You do not know whether there was any charge against him?

A. No, sir.

Q. Or that he had any other troubles other than that he owed you a bar bill and this borrowed money?

A. No, sir.

[Re-Direct] Examination.

Q. You have been in the bar business some two years at Florala?

A. Yes, sir.

524 Q. Were you or not in the habit of seeing forsigners employees of the Jackson Lumber Company down at Florala?

A. Yes, sir; I have seen them.

Q. Were they employees of the Jackson Lumber Company?

A. Yes, sir.

Q. State how and when and about how often they would come there and about how they would go?

A. They came in there about every week, about once and twice a week; sometimes they would come in at night and sometimes during the day time.

Q. Many of them at a time?

A. Sometimes ten or twelve in a squad.

Q. Was there anybody with them that had charge o them?

A. Not that I know of; I never saw anybody.

Q. They seemed to be going at random and will?

A. Yes, sir; went where they pleased.

Q. Did some return at one time and some another?

A. Yes, sir; some stayed there till twelve o'clock at night and when I closed up.

Q. Did you know whether that condition prevailed during the months of June and July last?

A. Yes, sir; to the best of my recollection it was.

Re-Cross Examination.

Q. Did you see Big Harry up there Saturday nights. Do you know Harry Halverson?

A. I do not know.

Q. Do you know Archie Bellinger?

A. Yes, sir.

525 Q. Did you see him up there Saturday nights?

A. Yes, sir.

Q. Did you know one Angelo?

A. Not by that name. I might have known his face.

Q. Did you know Fagan?

A. Yes, sir.

Q. Did you see him up there Saturday nights?

A. Yes, sir.

Q. Did you know Lamata?

A. Yes, sir.

Q. Did you see him up there Saturday nights?

A. I do not know whether I saw him or not.

Q. Was it not a fact that you would see these fellows generally when you would see these other foreign men up there mixing up?

A. I have seen them there together and I have seen them there without each other.

Q. What was the manner and dress of Bellinger and Gallagher and Harry and the other fellows when you would see them?

Q. Were they wearing anything other than their clothes?

A. I never saw them with anything besides their clothes.

Q. You never saw them with a pistol?

A. No, sir.

Q. Don't you know it to be a fact that these bosses carried pistols?

A. No, sir.

But to the asking of said question the defendants did then and there object upon the ground that it was not in cross of anything that had been asked the witness. Which objection the Court did then and there overrule. To which ruling of the Court the defendants did then and there except.

526 Q. Do you know Arthur Buckley?

A. No, sir; I do not know but very few by their names.

Q. These crowds that you saw up there, how many Hungarians did you know among them?

A. I did not know any to be Hungarians. I could not understand their language.

Q. You did not know the difference between Hungarians and Germans?

A. No, I do not know that I did.

Q. You did not know Arthur Buckley?

A. No, sir.

Q. Nor Herman Osmenski?

A. No, sir.

Q. Nor John Smith?

A. No, sir.

Q. Nor Albert Danish?

A. No, sir; do not know them by their names.

Q. Did you know Trulich Mihaley?

A. No, sir.

Q. And Manuel Jordsman?

A. No, sir.

Q. You do not know that you saw either one of these boys up there in the month of July on Saturday nights?

A. Not by their names.

Q. Have you seen any of the Hungarians out there in the hall that you saw up there?

A. Yes, sir.

Q. Now many?

A. I do not know how many but some of them out there I have seen up there.

527 Q. And it was common for Bellinger and some of the men recognized as bosses to be up there on Saturday nights?

A. Yes, sir; they come there nearly every Saturday night.

Thereupon the defendants to maintain the issues in their behalf called as a witness one A. F. SHELLY, who, having been duly sworn, testified as follows:

Direct Examination.

Q. Where do you reside?
A. Florala.
Q. How long have you resided there?
A. Very near five years.
Q. Were you employed to do any work at the log camps of the Jackson Lumber Company during the month of July of last year?
A. Yes, sir.
Q. What was it?
A. Painting the cars.
Q. When did you begin that work?
A. On the twentieth of July last.
Q. It was the twentieth when you went there and you completed it when?
A. The thirtieth.
Q. Were you employed there continuously from the twentieth to the thirtieth?
A. I was there all the time. I worked seven and a half days—all the time.
528 Q. Did you see Mr. Gallagher at any time during the twentieth day of July?
A. Yes. sir; I saw him during the day all day.
Q. Where was he?
A. In the forenoon around in the woods and I saw him different times come into camp and in the afternoon he was at a cabin in the afternoon—he had a crippled foot.
Q. During the afternoon?
A. Yes, sir; right after dinner I went down there and stayed with him the biggest part of the afternoon.
Q. Where did you sleep when at work out there?
A. In the boarding cars.
Q. Did you sleep in the boarding cars adjoining any of the cars where the foreigners slept?
A. Yes, sir.
Q. Did you observe at that time any watchman about there?
A. Yes, sir; there was a watchman about there.
Q. Do you know who it was?
A. Louis May.

Q. Did you observe any other watchman about there?

A. No, sir; not during that time.

Q. Do you know what his duties were?

A. To take care of the company's property as I understood and look after the engine and fire them up in the morning.

Q. You did not see him doing anything that indicated to you that he was guarding the men, did you?

A. No, sir; it did not appear that way to me.

Q. Now, as far as you could discover, was there during the time you were there anything to indicate any surveillance was being kept over the men?

A. No, sir; not at all.

529 Q. Did they come and go at their will?

A. Yes, sir.

Q. Now, will you state whether or not during the month of June and the first ten days of July this year, you were in and about Florala?

A. Yes, sir.

Q. Will you state whether or not you saw any of these men—foreigners—going and coming at pleasure?

A. Yes, sir; I saw numbers of them at times in Florala. They would come in bunches of two and three and a dozen at a time.

Q. Would they not straggle in and out at pleasure?

A. Yes, sir.

Q. Did they, so far as you could discover, have anybody—

But to the asking of the question counsel for the Government objected.

Q. Will you answer the question?

A. Repeat it.

Q. I asked you whether at any time you saw these men about there whether there seemed to be any one in custody of them or whether they seemed to go at pleasure?

A. They always come and go as they pleased, same as all the other employes. I never saw anybody with them that seemed to be guarding them.

Q. Do you know whether there were any foreigners in this crowd that you saw going and coming?

A. Yes, sir; I knew they were foreigners.

Q. Did you at any time, particularly the time you were about these camps, observe any mistreatment of the men or the employes by the bosses?

A. No, sir; not at all. I did not see any mistreatment of any kind while I was there.

530 Cross Examination.

Q. Which car did you sleep in?
A. The one the office was in?
Q. How many strings of cars are there around there?
A. There are fourteen cars there and nine in the string I slept in.
Q. How far was the other string from where you slept?
A. About one hundred yards from the other track.
Q. When was it you did your sleeping there?
A. From the twentieth to the thirtieth of July.
Q. Was it the twentieth you set into work there?
A. I went there on the twentieth.
Q. What did you do the day of the twentieth?
A. I was around the camp waiting for the men who employed me to go to work.
Q. What did you say your work was?
A. Painting.
Q. Painting around the camp?
A. Painting the cars.
Q. Where are you working now?
A. I am working in Florala.
Q. Who hired you to go there to work?
A. Mr. Gus Gallagher.
Q. How did you come to be there at Florala watching the movements of the men?
A. I was not watching them, but I was there every day.
Q. Did you have any instructions from the company to see how they came and went?
A. No, sir.
Q. I understand you worked from the twentieth to the last of July?
531 A. Yes, sir.
Q. Have you been there since?
A. No, sir.
Q. That is the only time you were there?
A. Yes, sir.
Q. Were you there when these Hungarians, these car loads of foreigners were brought down there?
A. They were there when I came there.
Q. You did not see any restraint; nothing of that kind; they came and went?

A. Yes, sir.

Q. How did they come and go to work?

A. Some went afoot and some went—

Q. I am speaking about who was with them?

Q. When was it they were allowed to go on the trains up

A. There was a foreman in charge of a crew, I believe.

to Lockhart and back?

A. Any time after working hours.

Q. That is, you and the other men who were working around the camps?

A. Yes, sir.

Q. Do you know whether any Hungarians were allowed to go after working hours?

A. Yes, sir.

Q. How many did you see go and come and how often?

A. I could not tell you how many each time, I saw so many.

Q. Did you ever see Arthur Buckley at all?

A. I could not say; I do not know them by name.

Q. Did you know any of them; did you get personally acquainted with any of the Hungarians?

532 A. Only one I knew by name.

Q. Then you do not know anything about whether Herman Osmenski was allowed to go to Florala when he wanted to or not?

A. I do not know him by name.

Q. Or Manuel Jordsman?

A. No, sir.

Q. Or Charles Smith?

A. No, sir.

Q. Or John Smith?

A. No, sir.

Q. Or Charley Haas?

A. No, sir.

Q. Did you know William Keller?

A. Not by name.

Q. Did you know Joe Davis?

A. No, sir.

Q. Did you ever see them at Florala at night?

A. I could not say whether I ever saw them or not. I do not know them by name.

Q. Louis Docks; did you know him?

A. No, sir.

Q. Did you know John Foster?

A. No, sir.

Q. You never saw him up at Florala at night?

A. I might have seen him, but I do not know him by name.

Q. I am asking you whether you saw him or not?

A. I could not say.

Q. You spent the afternoon with Gallagher?

A. Yes, sir; the afternoon of the twentieth.

Q. Are you here under subpoena?

533 A. No, sir; not exactly. I was asked to come down here. Mr. Gallagher asked me to come.

Q. Were you there the twenty-first of July?

A. Yes, sir.

Q. You set in to work on the twenty-first day of July?

A. Yes, sir.

Q. Where was Gallagher on that day?

A. Around the camp, as near as I can recollect.

Q. I want your recollection to be pretty certain about this. You do not know that Gallagher went away that day and came back with two foreigners?

A. I could not say. He was coming and going continuously.

Q. Where was he going and coming continually?

A. To and from the woods. He had different gangs of men in the woods.

Q. Did you understand that he was looking after these men—these employes and foreigners?

A. I know—

Q. Didn't you know as a matter of fact that on the twenty-first of July, the day you set to work there he went off after two foreigners?

A. I do not know anything about it.

Thereupon the defendants to maintain the issues in their behalf called as a witness one S. C. SINKFIELD, who having been duly sworn, testified as follows:

534 Direct Examination.

Q. Are you employed at the plant of the Jackson Lumber Company at or near Lockhart, Alabama?

A. Yes, sir.

Q. When did you begin work at that point for them?

A. I commenced to work for them in August, 1902.

Q. Have you worked continuously for them ever since that time?

A. Yes, sir.

Q. What was the nature of your employment?

A. I looked after all the building and construction and repair work in the carpenter line around the mill and plants.

Q. Were your duties such as to enable you to observe the going and coming of the men employed at the log camp?

A. Yes, sir.

Q. Are you in a position to state whether those men went and came at pleasure?

A. Yes, sir.

Q. Did they or did they not?

A. They did.

Q. Did the foreigners come and go at pleasure?

A. Yes, sir.

Q. Did you observe their conduct during the months of July and June of this year?

A. Well, I do not know as I understand the question.

Q. Are you in a position to state that they came and went as they pleased during the months of June and July of this year?

A. Yes, sir.

Q. Did you see them?

A. Yes, sir; I seen them numbers of times near Lockhart and Florala and on the road between the different places.

Q. Do you or not know the company's bosses for
535 the Jackson Lumber Company?

A. Yes, sir.

Q. Were any of these men under the surveillance of the bosses when you saw them going and coming?

A. No, sir.

Q. Where would these men go?

A. Sometimes—you mean the men coming from camp?

Q. Yes, sir.

A. Some go to Florala to do their trading, some come into Lockhart and some go to Florala to do their trading.

Q. Would they go and come irregular or in regular squads?

A. Sometimes they would go in squads and sometimes two and three.

Q. Did that include the foreigners that worked there?

A. Foreigners and Americans.

Q. Was there any difference so far as you observed between the foreigners and the other persons employed there?

A. None at all.

Q. You know that these men were not in charge of any bosses in their going and coming?

A. Yes, sir.

Q. Were you in the habit—did most of the foreigners speak any English or not?

A. Some of them could speak English.

Q. Did you talk with any of them?

A. Of course I talked with some of them.

Q. Freely or just casually?

A. Just casually, just now and then that I would have anything to say to them.

536 Cross Examination.

Q. Where did you come from when you came in 1902?

A. In Louisiana.

Q. Where from there?

A. Where from there, Arkansas.

Q. Where from there?

A. I was raised in Arkansas.

Q. This class of work you have been doing nearly all of your life?

A. Yes, sir, lumber camps.

Q. What was your particular business; what was your duties up there in July of this year?

A. Just looking after the repair work, the building, carpenter work of all classes around the mill and through the dwellings.

Q. Did you work in the office any?

A. No, sir.

Q. Did you handle any books?

A. No, sir.

Q. Any other man there—where was this work, down at the turpentine camp?

A. No, sir; at the mill.

Q. Not at the lumber or log camp?

A. No, sir.

Q. Do you know of any other man up there by your name, by the name of Sinkfield?

A. There are several Sinkfields there.

Q. Related to you?

A. Yes, sir.

Q. How many of them?

A. Well, there is two right at the mill.

Q. How many at the log camps?

537 A. None.

Q. In July of this year?

A. None.

Q. None at the log camp in July of this year?

A. No, sir.

Q. Do you know whether there was one at the turpentine camp?

A. Yes, sir.

Q. What was his business?

A. He was a bookkeeper.

Q. What relation to you?

A. A brother.

Q. How often were you at the turpentine camp?

A. Not very often. Twice this year is all.

Q. You do not know much about conditions out there?

A. Nothing only just—

Q. What the boys tell you?

A. Of course I could not say that they told me anything.

Q. How often were you down at the log camp?

A. Only once there.

Q. Since you have been employed out there?

A. Once this year.

Q. You do not know anything about conditions out there, whether the men were allowed to go and come freely and intermingle—I am asking you of your own knowledge?

A. I am speaking about the men coming from the log camp.

Q. You were only out there one time this year?

A. I believe one time is all.

Q. Were you there during the month of July at all?

A. No, sir.

Q. Were you at the log camps during the month of July, at all?

A. No. sir.

538 Q. All you know about the treatment of the men coming and going you would see them at Lockhart at night?

A. Yes, sir.

Q. And met them on the road?

A. I have seen them passing numbers of times.

Q. Did you pay any special attention to them passing?

A. Not any more than any other men.

Q. You did not pay enough attention to designate any particular man going and coming?

A. I could not tell. I could not recall any names now, for I did not know their names.

Q. That is the saw mill you work at? It is at Lockhart proper?

A. Yes, sir.

Q. I understood you to say that you were not at this camp in July?

A. No, sir.

Q. Where were you on the evening of July ninteenth?

A. I was sick.

Q. Where did you stay?

A. At number ten.

Q. At the hospital?

A. No, sir.

Q. Boarding house?

A. No, sir; I have a family.

Q. On the nineteenth of July you were sick?

A. Yes, sir.

Q. How long were you sick?

A. About a week.

Q. Where did you get sick?

A. Taken sick about the fifteenth.

539 Q. Do that you know you were not around the store or office building on the nineteenth?

A. No. sir; I was not out from about the fifteenth to the twenty-fourth or the twenty-fifth. I was in bed.

Re-Direct Examination.

Q. When you spoke of men coming and going freely were you referring to the man at the logging camp?

A. Logging camps and turpentine camps, too. That is, I could not say what camp they were coming from. They were coming from the camps, but I do not know what men worked at one camp or the other.

Q. They were not men employed at Lockhart proper?

A. No, sir.

Q. They were men in the camps?

A. Yes, sir.

Q. Did or did not the road leading from the camps to Florala from the camps?

A. Right through Lockhart and in going from the camps io Florala they would go by Lockhart.

Q. If they went in the ordinary way?

A. Yes, sir.

Q. Is Lockhart cut up into streets?

A. Yes, sir; streets and blocks.

Q. Where did you live?

A. At number 10 on Main street, right in front of the hotel.

Q. Is not that the way people usually travel in going to Florala from the camps?

A. Yes, sir; pass right between my house and the hotel.

540 Re-Cross Examination.

Q. Is it not a fact that a number of these people you saw coming and going from the camps actually lived at Lockhart?

A. No, sir; they all lived out at the camp.

Q. Didn't a number of the employes work out there live at Lockhart?

A. Yes, sir.

Q. Of course you saw them coming and going?

A. They come in and out on the train; go out early every morning and come in every night.

Thereupon the defendants to maintain the issues in their behalf called as a witness one JOE BENDERSTOCK. who having been duly sworn. testified as follows:

Direct Examination.

Q. What is your nationality and where did you come from?
A. Austria.
Q. Where are you at work; where do you live now?
A. Lockhart.
Q. What do you do there?
A. All kinds of work. Swamp, saw down logs.
Q. When did you come to Lockhart?
A. On the eighteenth of July.
Q. Did anybody come with you?
A. Yes, sir.
541 Q. How many?
A. About eighteen.
Q. Do you know Trulich Mehiley?
A. Yes, sir.
Q. Did he come down with you?
A. Yes, sir.
Q. Did you reach Lockhart in the day or night time?
A. Night.
Q. On the night of the eighteenth?
A. Yes, sir.
Q. Where did you sleep that night?
A. Me and my wife slept in a house.
Q. Did you have any box of clothing?
A. Yes, sir.
Q. Where was that?
A. In the car outside.
Q. Did you lose any clothing that night?
A. I lost a coat and two shirts.
Q. Did you tell anybody the next morning that you had lost a coat and two shirts?
A. I told Mr. Gallagher?
Q. About what time?
A. Half past eight. I was getting up about six o'clock and I put on my pants in the morning for to go to work, but I didn't see anybody else.
Q. Did you see Mehaley after that?
A. I saw him night time.
Q. Did he tell you that he took that clothing?

A. He told me that. I told him I ask him if he took any clothing, and he says yes.

542 Q. Did you speak the same language that Mehaley did?

A. Yes, sir.

Q. Did you have any conversation with him on the way down?

A. Yes. sir; and he told me that he run away from New York.

Cross Examination.

Q. When did you report that these clothes had been stolen?

A. The first day.

Q. Did you tell anybody then who got them?

A. I told Mr. Gallagher.

Q. Did you tell Mr. Gallagher the next morning when you saw him who you thought had your clothes?

A. I lost the clothes that morning.

Q. Had you seen Mehaley that morning?

A. Sure I seen him. I give him a nickel to get some tobacco.

Q. What did you say to him about the clothes?

A. I didn't say nothing. The next day I say did you take my clothes, and he say yes, I take them.

Q. What did he say he did with them?

A. He say he took them.

Q. Did he bring them back?

A. No, sir; I did not see them.

Q. Did you ask him where your clothes were?

A. No, sir.

Q. Didn't you try to get your clothes at all?

A. No, sir.

Q. What sort of clothes were they; what color clothes?

A. Black summer coat and black shirt.

Q. Had you ever worn those clothes before?

A. No, sir.

543 Q. Did you have them on the trip down?

A. No, sir.

Q. They were summer clothes?

A. Yes, sir.

Q. Where was the first time you ever saw Mehaley?

A. On the ship.

Q. Did you say you were an Austrian?

A. Yes, sir.

Q. Do you speak the Hungarian language?

A. I could not speak the Hungarian. I know Slavish and Polish.

Q. Do you know whether Mehaley could speak to you in your language?

A. Yes, sir.

Q. What is that?

A. Slavish.

Q. What language does your wife speak?

A. Slavish.

Q. Now, you say the conversation you heard Mihaley talking about leaving New York was with your wife?

A. Mihaley told to my wife nobody knows how I come out from New York.

Q. Who else was there, any Hungarians?

A. The whole lot.

Q. Big crowd?

A. Yes, sir.

Q. Name some of them?

A. I cannot tell them.

Q. Didn't they come to Lockhart?

A. Yes, sir.

544 Q. And some of them are there yet?

A. All gone.

Q. All run away?

A. Yes, sir.

Q. Were you there when Mihaley was brought back?

A. Yes, sir.

Q. Where were you?

A. From Lockhart to the camp.

Q. Were you at Lockhart when Mehaley was brought back?

A. Yes, sir.

Q. Up at the office?

A. I was down at the store selecting some furniture.

Q. In the store?

A. Yes, sir.

Q. Were you there at the office when Mehaley was brought back?

A. Mr. Sandow told me you know that fellow. He got out of the buggy.

Q. You did not see it?

A. No, but Mr. Sandow called me.

Q. Did you see Mihaley in the buggy?

A. Yes, sir.

Q. When he come up there?

A. Yes, sir.

Q. Did you see anything done to him?

A. No, sir.

Q. You did not see anything done to him at all?

A. No, sir.

Q. Was Dr. Grace there?

A. Dr. Grace was in the buggy and Mihaley on the back.

Q. You saw them when they came up there, didn't you?

A. Yes, sir.

545 Q. Did you go out with Mehaley when you went back to work?

A. Yes, sir.

Q. Did you go in the same buggy?

A. Yes, sir.

Q. With Dr. Grace?

A. Yes, sir.

Q. Where did you go to? Did you say anything to Mehaley that evening about your clothes?

A. No, sir. I told that the next day.

Q. You knew that your clothes had been missed—you did not say a word to him about it—you rode all the way back from Lockhart to the camp?

A. No, sir.

Q. When did you get the idea that Mehaley got your clothes? Did Grace or Gallagher bring any clothes back to you?

A. No, sir.

Q. Have you talked with them about this matter, about stealing your clothes since then?

Q. I didn't told them. I lost them—I don't know who took them.

Q. Do you know where Mehaley slept that night?

A. No, sir; he slept out in the cars.

Q. You did not know when you rode back with Mihaley who had stolen your clothes?

A. No, sir.

Q. Didn't Dr. Grace or Mr. Gallagher suggest or tell you who stole your clothes?

A. I told myself.

Q. Didn't Mr. Gallagher say that this Mihaley had stolen your clothes?

A. No, sir.

546 Q. Did you ever make complaint to anybody else?

A. No.
Q. Nobody but to Gallagher?
A. No.
Q. What did they bring Mehaley back for?

To the asking of which guestion counsel for the defendants did then and there object upon the ground that it seeks to elicit hearsay testimony, and testimony that would be irrelevant and immaterial.

But the Judge did then and there overrule such objection.

To which ruling of the Court defendants did then and there except.

Q. You say you do not know what they brought Mihaley back for?
A. No.
Q. You did not hear?
A. No.
Q. And it was not until the next day that you said anything to him about your clothes?
A. No.
Q. You never got your clothes back?
A. No, sir.
Q. You never saw them any more?
A. No.
Q. Was any effort made by Mr. Gallagher to get your clothes from anybody else?
A. No.
Q. Nobody else at all?
A. No.
Q. Never did find them?
A. No.
547 Q. Was any other boys leaving there about the same time?
A. No, sir.
Q. Nobody leaving?
A. No, sir.
Q. You say you slept in a little house, you and your wife the first night?
A. Yes, sir.
Q. How far from the cars?
A. About twenty-five feet.
Q. Did anybody else sleep with you that night?

A. No, sir; my wife and myself and my child.

Q. These were the only ones in that room all night?

A. Yes, sir; I got up in the morning and saw everything was all right, and after Mehaley didn't want to go to work and I didn't know what it means and he says I got only two pennies and want some tobacco, and I give him tobacco and didn't know which way he go and did not see him any more.

Q. Didn't he says where he was going to get the tobacco?

A. Yes, sir.

Q. Where?

A. In the store.

Q. Where was the store?

A. In the camp.

Q. How far was he from the store when you gave him the nickel?

A. I could not tell you.

Q. Did he go towards the store?

A. About a half a mile.

Q. You did not see him go to the store?

A. No.

Q. You do not know where he went?

A. No.

548 Q. Where were you when you gave him the nickel?

A. I was sitting on the railroad.

Q. How far from your cabin?

A. Twelve or fifteen feet from my cabin. He was down at John Colechaneys.

Q. When did you go back to your cabin again after you had given him the nickel?

A. I wait a long time. It was about seven o'clock when I give him the nickel and I wait until about eight o'clock and half past eight before I went to Gallagher.

Q. Eight in the morning or night when you told Mr. Gallagher?

A. Morning.

Q. What time did you give the man the nickel?

A. About seven o'clock.

Q. Your clothes were all there when you got up in the morning?

A. Yes, sir.

Q. When did you go back in the cabin after giving Mihaley the nickel?

A. About eight o'clock.

Q. You went in there again?

Q. Yes, sir; I went to change my clothes.
Q. Did you see Mihaley anywhere about that house?
A. No.
Q. You did not see him there?
A. No, sir.
Q. Did you see Colechaney about there?
A. He was with me.
Q. Had Colcechaney been to your cabin that morning?
A. Yes, sir.

549 Re-Direct Examination.

Q. Where was your box, in the car?
A. Out side the car.
Q. Not in the house?
A. No, sir.

Re-Cross Examination.

Q. There was a whole lot of men staying in the cars that night?

A. I do not know.

Q. Where was the crowd that came down with you?

A. The night I came down from New York was about six o'clock and—

Q. Where was all the Hungarians that came down with you?

A. All the fellows gone to work that morning.

Q. Where did they stay that night?

A. Half gone to the turpentine—

Q. Didn't they stay in the cars that night?

A. Half to the turpentine and half to the camp.

Q. There was a whole lot of Hungarians in the cars that night?

A. Yes, sir.

Q. And your box of clothes was near the front car?

A. Yes, sir.

Q. Who was present with you and Mihaley the next morning after you got back—after Grace and Gallagher had brought him back, when he told you that he took the clothes?

A. I told him that next day when they brought him back to Mihaley, did you take any clothes, and he says yes, I took the clothes.

550 Q. Who was present?

A. I do not know.

Q. There was nobody there; who heard that conversation?

A. No, sir.

Q. Where was your wife?

A. Down at Lockhart.

Q. Just you and he alone?

A. Yes, sir.

Q. Where was it?

A. At the log camp.

Q. What place in the log camp. There are a great many cars. Where were you?

A. I go from camp to Lockhart about two weeks ago.

Q. I am talking about when Mihaley told you that he got your clothes; where was that—in the car?

A. No, outside the car.

Q. How far from the car?

A. Front car.

Q. How many other men were standing around?

A. I did not see none.

Q. There was nobody else around there?

A. No, sir.

Q. Where did they carry Mehaley when they brought him back?

A. To Gallagher's camp.

Q. That is the log camp?

A. Yes, sir.

Q. They did not carry him to the turpentine camp?

A. No, sir.

551

Thereupon the defendants called as a witness one M. A. GORDON, who having been duly sworn, testified as follows:

Direct Examination.

Q. Where do you live?

A. Lockhart.

Q. Are you employed at the plant of the Jackson Lumber Company?

A. Yes, sir.

Q. How long have you been employed there?

A. Since the fourth of January, this year.

Q. What duties do you perform?

A. Locomotive engineer.

Q. How long have you been such?

A. Do you mean there?

Q. Yes, sir?

A. Since the fourth of January.

Q. You went to that employment when you first went there?

A. Yes, sir.

Q. And have continued it ever since?

A. Yes, sir.

Q. Do you know whether there was or was not a regulation when you went there in January to prohibit men from riding on the train during working hours?

A. There was when I went there.

Q. There was a regulation?

A. Yes, sir.

Q. Just what was the regulation; explain it to the jury.

A. Well, after six o'clock every morning a person had to get a pass, any one going to the mill to go on the train before six o'clock that night.

Q. How was it at night?

552 A. After six o'clock any one could go who wanted to.

Q. In any direction the train ran?

A. Yes, sir.

Q. Now, during the time you were there just where were you running; did you go out on the spur tracks or run from the mill to the camps?

A. From the log camp to the mill.

Q. Were you or not brought into contact with the laborers? Did you more or less observe them and see them?

A. Yes, sir; would see them every day.

Q. Did you see the foreigners who were at work there in June and July?

A. Yes, sir.

Q. Do you know whether there was any restrictions thrown around those people to prevent them from going and coming when they pleased?

A. None that I ever saw.

Q. Do you know whether they did—these foreigners—go and come when they pleased?

A. As far as I could see.

Q. What did you observe to make you think so?

A. Because I have seen them going to and from the camp to the mill.

Q. Did you ever see them anywhere else except at Lockhart and at the camp?

A. I have seen them in Florala.

Q Did they or not—you knew the bosses, didn't you?

A. Yes, sir.

Q. Were any of the bosses with them when they would come and go?

A. Not that I have ever seen.

553 Q. Would they go in crowds or alone or how?

A. Generally in squads and bunches.

Q. Were you ever about the log camps after night?

A. No, sir; not after six o'clock. We generally left there about six o'clock at night.

Q. And you stayed in Lockhart?

A. Yes, sir.

Cross Examination.

Q. You say you are a locomotive man, were you?

A. Yes, sir.

Q. Your business was running the train?

A. Yes, sir, running the engine.

Q. Were you there in the month of July?

A. First part of July I was not. I had a vacation of two weeks, the first two weeks in July.

Q. Then you went back about the middle?

A. Yes, sir.

Q. What had you to do with the men? Anything?

A. No, sir.

Q. You did not stay at the camp?

A. No, sir.

Q. That is, where the cars were?

A. No, sir.

Q. You did not work out in the woods?

A. No, sir.

Q. What was the manner of these men going and coming from the woods; would they have bosses?

A. You mean with them?

554 Q. Yes, sir?

A. I do not know; I suppose they did.

Q. You suppose they did have bosses?

A. Yes, sir.

Q. You never even noticed particularly to see whether they had bosses or not?

A. Sure I did not.

Q. Now, when was this business about going to Lockhart and back pulled off?

A. When was it pulled off?

Q. Yes. Didn't you say sometimes you had orders not to allow men to go on the cars to and from Lockhart?

A. When I first went there I had an order from Mr. Bellinger that after work hours not to allow any one to go to the mill.

Q. That was in May?

A. That was in January.

Q. When did they pull that off. Was that order still in existence in the latter part of July?

A. Yes, sir.

Q. Do you know of anybody being prevented from going on the train about that time?

A. Not to my knowledge.

Q. Did you know anything about the occurrence of a negro who wanted to go to Lockhart on the train and was prevented?

A. No, sir; I was not here.

Q. You only heard about that?

A. Yes, sir.

Q. Now, going up and down, you were only in the camps a little while at a time?

A. Yes, sir.

555 Q, Did you see any of these laborers brought back there that had been away or ran away by any of these men?

A. I never did.

Q. You never did see it with your own eyes?

A. No, sir.

Q. Do you know where you were in the latter part of the afternoon of July the nineteenth?

A. I suppose I was about my engine somewhere.

Q. What time does your engine get to Lockhart?

A. At six o'clock.

Q. Would you arrive at six o'clock at Lockhart?

A. No, sir.

Q. What time would you arrive?

A. Generally from six thirty to seven o'clock.

Q. Is your engine shop anywhere near the office or hotel at Lockhart?

A. You mean where I stop my engine?

Q. Yes, sir?

A. I suppose it is a quarter of a mile.

Q. Now, have you been requested or directed by Gallagher or Bellinger or any of the defendants to intercede with anybody to make any kick about—to intercede with anybody who had make a kick about the way a man was carried back there?

But to the asking of such question counsel for the defendants did then and there object upon the ground that it is not in cross, and is irrelevant and immaterial.

But he said Judge did then and there overrule said objection. To which ruling of the Court the defendants did then and there except.

Q. You are still working for the company?

A. Yes, sir.

556 Q. You have been since July?

A. Yes, sir.

Q. Have you not been asked by Gallagher to intercede with Mrs. Paul or Mr. Paul in relation to the Mihaley incident?

A. No, sir.

Q. You never have?

A. No, sir.

Q. Will you swear that?

A. Yes, sir.

Q. Will you swear that you have never told Dr. Craig that? Do you know Dr. Craig?

A. I will swear that I never told him that Mr. Gallagher—

Q. What did you tell him?

But to the asking of said question the defendants did then and there object upon the ground that it is irrelevant and immaterial and not in cross and no sufficient predicate laid.

But the Judge did then and there overrule such objection. To which ruling of the Court the defendants did then and there except.

Q. Do you know Dr. Craig?

A. Yes, sir.

Q. How long have you known him?

A. Some six years.

Q. Did you have a conversation at Laurel Hill some time the latter part of—after the eighteenth of July, after you went back to work, in July—with Dr. Craig about this incident?

A. I did.

Q. About Gallagher—

A. Not about Mr. Gallagher.

Q. About Bellinger?

A. No, sir.

557 Q. Not any of these defendants?

A. Mr. Harlan.

Q. What was that?

A. There was something got up in that conversation between me and Dr. Craig some way or another, I do not know how it was, and Mr. Harlan—that was on Saturday, and on Saturday evening I suppose Mr. Harlan had heard about this Mihaley case or something, and he wanted to find out something about it, and asked me to go over there and see if it was so.

Q. Did he ask you if you knew the Paul family well?

A. If I knew old man Paul, and I told him I did.

Q. Was anything said in the conversation with Mr. Harlan about what Mr. Paul was going to do about raising a rumpus about it?

A. Not that I know of.

Q. Did you tell Dr. Craig that either Mr. Harlan or Mr. Gallagher asked you to go and see Paul?

A. I told him that Mr. Harlan did.

Q. And to make satisfaction with Paul?

A. Never told me to make any satisfaction.

Q. Did you tell Dr. Craig that they asked you to go and make satisfaction with Paul and stop the thing and patch it up? Didn't you tell Dr. Craig that?

A. I do not think I did. I do not remember that.

Q. I would like for you to say yes or no.

A. I could not say yes or no, for the reason that it has been quite a while ago, and I never give it a second thought.

Q. And then you won't say yes or no, as to whether you told Dr. Craig that you had directions and instructions to go and hush Paul in some way?

558 A. I told Dr. Craig that Mr. Harlan asked me to go and see him and see if it was so.

Q. Where was the conversation with Dr. Craig?

A. At Laurel Hill.

Q. Do you remember what day of the week?

A. It was on Sunday, I do not remember the date.

Re-Direct Examination.

Q. Did Mr. Harlan ever give you any such instructions—to go and hush it up?
A. No, sir.
Q. Nor nothing like it?
A. No, sir.

Thereupon the defendants, to maintain the issues in their behalf, called as a witness one O. HASKELL, who having been duly sworn, testified as follows:

Direct Examination.

Q. Where are you employed?
A. I am not employed anywhere.
Q. Have you at any time been employed at Lockhart at the log camps of the Jackson Lumber Company?
A. Yes, sir.
Q. When?
A. From the fifteenth of July until the first of September.
559 Q. Of this year?
A. Yes, sir.
Q. What were you doing?
A. Railroading.
Q. What position on the railroad did you hold?
A. Overseeing foreman.
Q. Construction and repair of the railroad?
A. Yes, sir.
Q. Where did you stay at night?
A. Right in the camps.
Q. At the log camps?
A. Yes, sir.
Q. Where did you sleep—in the cars?
A. Yes, sir.
Q. Were you there when some foreigners were brought in there about the nineteenth of July?
A. Yes, sir; I believe they brought in two cars after I went there.
Q. Do you know whether during the time that you were there any restrictions were thrown around the men—around those cars to prohibit them from going and coming whenever they pleased?

A. No, sir; none that I know of.

Q. Were you in a position to know whether restrictions were thrown around them or not?

A. I was; yes, sir.

Q. Now, did they go and come at all hours when they wanted to?

A. They did.

Q. You knew the foremen at that time, the bosses, did you?

A. Yes, sir.

560 Q. Did they go and come at pleasure without the bosses?

A. They did.

Q. Do you know whether the foreigners had the same liberty to go and come as the others?

A. All had the same privilege.

Q. Do you know whether or not there was any guard over the men, either day or night, during the time you were there?

A. There was no guards except the regular foremen.

Q. No guards at all?

A. I never knew of any guards.

Q. You never heard of any during the time you were there?

A. I did not see them at all.

Q. Were any of the foreigners working under you?

A. Yes, sir.

Q. Some of these foreigners worked under you on the railroad?

A. Yes, sir.

Q. Did you ever hear any complaints from any of them of being restrained of their liberty?

A. I never heard any kick coming.

Q. Do you know of your own knowledge that these men did go and come?

A. Yes, sir.

Q. Where did they go?

A. They went most anywheres they desired to, to Lockhart, to Florala and come on the trains.

Q. You have seen them yourself?

A. I did.

Q. You have seen them in Florala?

A. I did.

Q. Were any bosses with them?

561 A. I was over there and the others all go and come together. I was not paying any attention to them over there.

Q. Were you there to look after any men in Florala, to watch the men to keep trail of, them?

A. No, sir; not after we knocked off our work at six o'clock. I did not have anything to do with them.

Q. Do you know whether at night they went and came on the train without passes?

A. Yes, sir.

Q. Did they have to ask anybody?

A. No pass requested of them after six o'clock in the evening.

Q. They did not have to go to any one to get permission?

A. Not any one at all.

Cross Examination.

Q. You say you are vacant now?

A. Yes, sir.

Q. How long have you been vacant?

A. Since September.

Q. Where were you found when needed here to come to court?

A. Florala.

Q. Do you live there?

A. No. I stay around there.

Q. You say you were a boss there during the month of July?

A. Yes, sir.

Q. How many men did you work?

A. I worked anywhere from twelve to eighteen.

Q. Was your work laying cross-ties—building railroad?

A. Yes, sir; and cutting out right of way.

562 Q. Do you know the names of any of the Hungarians that you worked?

A. I do not remember their names.

Q. Did you work any Hungarians?

A. Yes, sir; I worked all kinds.

Q. You say the bosses would go out with them in the morning and they would come back with the foremen?

A. Yes, sir; go out at six o'clock.

Q. Suppose some of your men over whom you were boss had undertaken to leave your work out there on the railroad track, what would you have done?

But to the asking of such question the defendants did then and there object upon the ground that it is a hypothetical question, and upon the further ground that it is what he would have done and not binding upon the defendants in the case.

Question was then withdrawn.

Q. Now, when you were working in July, when you were working these men, by whom were you employed; who was your boss?

A. I was under Mr. Gallagher.

Q. Did you or not have instructions from Mr. Gallagher whether to—where to work and to take these men to and from work and what to do with them?

A. I did.

Q. Now, you say you carried out crews in the morning, brought them to dinner and went back in the afternoon to work?

A. Yes, sir.

Q. Different kinds of men?

A. Yes, sir.

Q. And you had from twelve to eighteen men in your crew?

A. Yes, sir.

563 Q. Did any of the men ever try to leave your employ out in the woods?

A. I sent one off after a bucket of water and he got lost.

Q. Did you go and look for him?

A. No, sir.

Q. Did he come back?

A. Yes, sir.

Q. What were your directions from your bosses—what did you understand the instructions to yourself and the others as to any men who were trying to leave? Were you not authorized to get the men in your employ again?

A. What instructions I had?

Q. Yes. General instructions if the men tried to get away from you in the woods?

A. I did not have any.

Q. What would you have done if one had thrown down his ax and—

But to the asking of such question the defendants did then and there object, which objection was sustained.

Q. Is it not a matter of fact that you and the other bosses working the men away from the camp had instructions to get these men, to keep these men and bring them back at dinner time and bring them back at night?

A. We did not have any such instructions. Of course it was a matter of fact that we had to go back at noon hour for dinner.

Q. What do you mean, for you to come back or bring the other men with you?

A. Just either had to go back or do without your dinner.

Q. Didn't you always come back with the men?

A. I did.

564 Q. Right along with them?

A. Yes, sir.

Q. Didn't you always go right back with them, right along with them?

A. Yes, sir.

Q. No straggling behind or holding back; did you walk behind or before?

A. Sometimes behind and sometimes before them.

Q. How did you come back from the woods?

A. Sometimes walked and sometimes go out on the train.

Q. Didn't you say awhile ago on your direct examination that there was no guards except the foremen over these men? What did you mean by that? Didn't you mean that you foremen would guard these men going out and while they were there and back and see that they came back at night?

A. No, sir.

Q. What did you mean, then?

A. Just out there—just like other foremen—to see that the work was being done right.

Q. Why did you say that the foremen guarded the men. You said there was no other guard except the foremen. That was your language. What was the foremen guarding and what was they guarding them for?

A. Just like other foremen.

Q. Just to see that none got away?

A. No, to see that the work is carried on out there.

Q. Are you down here under subpoena, or did you come down here at the request of Gallagher?

A. I did.

Q. You have not been subpoenaed?

A. No, sir.

565 Q. Have you not talked the matter over with Gallagher several times?

A. No, sir.

Q. You were not a witness last week or the week before?

A. Yes, sir.

Q. Didn't you say then that you discussed the matter with Gallagher before you came here?

A. I did not.

Q. Did Gallagher ask you what you knew about it?

A. No, sir.

Q. You did not know what you were coming here for?

A. Yes, sir; I knew what I was coming here for.

Q. Now, in the month of July, you say the men were going and coming on the train whenever they wanted to?

A. Yes, sir.

Q. Going up and coming back on the train?

A. Yes, sir.

Q. What did Gallagher shoot at the negro for?

A. I do not know anything about that.

But to the asking of the question and the answer thereto the defendants did then and there object upon the ground that it is not in cross of anything that has been asked, and it is irrelevant and immaterial.

But the Court did then and there overrule such objection. To which ruling of the Court the defendants did then and there except.

Q. You did not know that Gallagher shot at the negro at the camp?

A. I did not.

Q. You did not see nor hear of it?

A. No, sir.

Q. Do you know one Angelo?

A. Yes, sir.

566 Q. Was he a boss?

A. Yes, sir.

Q. Did he work a crew of men?

A. He did.

Q. What did you see Angelo do to one of his men?

A. I was not paying any attention to Angelo.

Q. Were you paying any attention to the men?

A. I did not have any orders to look after Angelo and his men.

Q. Did you see Angelo whip a man, didn't you?

A. I did not. I saw him get a little fractious and strike a boy.

Q. What did he strike him with?

A. A little switch, about so long.

Q. A little ax handle?

A. No, a switch.

Q. Which boy did he strike?

A. I do not know his name.

Q. Was he a Hungarian?

A. No, American boy.

Q. A little fat fellow with black eyes?

A. Yes, the best I can recollect.

Q. What was it about?

A. Well, he was just getting a little fractious.

Q. What had the boy been doing; had he been off and stayed too long?

A. No, sir.

Q. What was it about?

A. Angelo was, he was a sort of kind of fractious fellow.

Q. Tell us what he was hitting the boy about?

A. He got a little fractious with him about the water toting.

567 Q. The boy had to go off after water?

A. Yes, sir.

Q. And stayed too long?

A. No, he did not stay too long.

Q. When you were going to and from the camp with these men like the other bosses, did you carry anything along with you?

A. No, sir.

Q. Will you swear that you never carried a pistol as foreman out there with these men?

A. No, sir.

Q. Did Angelo?

A. If he did I never saw it.

Q. Did Gallagher?

A. I never saw Gallagher.

Q. In the latter part of July you never carried a pistol every day with you?

A. I did not.

Re-Direct Examination.

Q. Did you have any authority to hold any men or undertake to restrain them if they should leave you?

A. I did not.

Q. You were there to oversee the work being done?

A. Yes, sir.

Q. You never saw anybody restrained of their liberty at any time or prevented from going?

A. No, sir.

Q. Did you ever hear them threatened or told not to go?

A. I did not.

568 Q. And the only thing that you saw anybody strike anybody was Angelo striking this boy with a switch?

A. That is all I saw in anywise mistreated.

Q. Was it unusual to see these men fighting among themselves out there?

A. They was continuously having a scrap among themselves out there.

Q. It was nothing unusual to see them fight at the log camp?

A. Nothing unusual between themselves.

Q. You saw more fighting among the men than among the bosses and the men?

A. That is all I saw.

Thereupon the defendants, to maintain the issues in their behalf, called as a witness one JOHN BUTLER, who having been duly sworn, testified as follows, to-wit:

Direct Examination.

Q. Where are you employed, John?

A. Jackson Lumber Company, Lockhart.

Q. How long have you been employed there?

A. Ninth day of September been there four years.

Q. What have you been engaged in; what kind of work?

A. I am edgerman or gang man in the saw mill department.

Q. Were you working about the mill at Lockhart at the time a crowd of foreigners was brought in there, about the twenty-sixth of last June?

A. Yes, sir.

569 Q. That came in from Savannah?

A. Yes, sir.

Q. Were you about there on the 19th of July when another crowd was brought in?

A. Yes, sir.

Q. Did you see those foreigners frequently?

A. I see them going from the cars from the mill to the works.

Q. Now, were those foreigners [allowed] or not allowed to go and come when they pleased?

A. Why, yes, sir; because I would see them every Saturday coming in on the train and pass in and out from the mill to the woods, happy and free; yes, sir.

Q. When they got to Lockhart, would they go to Florala and various places, or not?

A. Yes, sir; go to Florala every Saturday night.

Q. You know the bosses there, all of them, do you?

A. Yes, sir.

Q. Were these men in the control and management of those bosses when they came down and would go to Florala and Lockhart?

A. They did not control them after they got in Lockhart. When they quit work and got in Lockhart they were under their own control.

Q. They went where they pleased?

A. Yes, sir.

Q. Were you ever out about the log camp in June?

A. Yes, sir; I have been out on the train over there.

Q. Did you ever see any mistreatment of these men, the foreigners?

A. No, sir.

570 Q. So far as you could observe they were treated like all the other laborers?

A. Yes, sir; all treated alike as far as I know.

Q. Do you know that the general reputation of Mr. Harlan is among the laborers for peace and quietitude and for humane treatment of his men?

A. Why, to the best of my knowledge Mr. Harlan has been good in the way of treatment in regards to laborers, as good as, I reckon, anybody could be. I have known nothing that he have said or done to make no disturbance among his men.

Q. How long have you been with Mr. Harlan altogether?

A. I got acquainted with him in 1897.

Q. You have been with him—

A. In three different States, all excusing ten months and that time he was come out to South Alabama here to look for a saw mill site, what is called Jackson Lumber Company plant—that is the onliest time I have not been with him since 1897.

Q. You have had an opportunity, then, to see him under all sorts of conditions and all kinds of classes of men, have you?

A. Yes, sir; since 1897.

Q. You were in a position at Lockhart to observe Mr. Harlan's conduct with the men, were you?

A. Yes, sir.

Q. Was he or not universally kind to and considerate of the men?

A. Yes, sir.

Q. He was universally kind?

A. Yes, sir; he has been kind to all the laborers so far as I know, ever since I have known him.

571 Q. Has he made any distinction between the men in different positions or of different nationality?

A. No, sir; no distinction at all, as I know of.

Q. You never have observed any?

A. Not since I have been acquainted with him in 1897.

Cross Examination.

Q. You are talking about his humane and kindly treatment of men. All you know about it and all you are testifying to is your own knowledge, ain't it?

A. Why, certainly, that is it.

Q. You have never heard any other employes saying anything about it?

A. No, sir; don't know. All I know is just by my own knowledge, and I have seed him work different nations and different kinds of people before he come to Lockhart, Alabama.

Q. We are talking about Lockhart, Alabama. It is nothing but fair that we should confine you to that place. Now you are pretty intimate with Mr. Harlan; you are one of his pets?

A. No, sir. I come over there as I knowed him and they had a good mill there and I was following the mill business and I wrote to him for a job, as I was a gang man, and I wrote him for a job running the gang, and he answered my letter at once and told me, yes, to come, and I moved my family and come.

Q. Now, have you discussed with any other of the employes any of the Hungarians there around that plant about the log camp, whether Mr. Harlan was good or kinder bad?

A. No, sir; because I cannot talk their language.

Q. Answer the question and don't go into anything else. You lived at Lockhart yourself?

572 A. Yes, sir.

Q. You have got a house there. Do you own your own house?

A. No, sir; I rent.

Q. You say you have seen men going to and from Florala?

A. Yes, sir.

Q. How do you know that they had gone to Florala? Did you go with them?

A. I go to Florala sometimes, and I meet them on the road and I have seen them in Florala.

Q. Have you ever gone with any Hungarians to Florala?

A. No, sir; but I see them in Florala and I would be coming back and I would meet them going to Florala on Saturday night.

Q. How often do you go down to camp No. 1?

A. I go out there probably one or twice a month.

Q. On Sundays? What other days?

A. Working days through the week.

Q. Did you have business—going out to hear the complaint of the men?

A. No, sir; just to see how the work was going on.

Q. Do you know anything about any telegrams that directed Mr. Sandor to send to hold up two men at Florala?

A. No, sir.

Q. You never heard that discussed?

A. No, sir.

Q. You did not know anything about that?

A. No, sir.

Q. Did you know anything about the Hungarian that was brought back to the camps because he had run away?

A. I read that in the Pensacola Journal.

573 Q. Are you acquainted with the location of Mr. Harlan's house?

A. I have not been around there much since I have been in Lockhart.

Q. Your intimate acquaintance with him is around the mill?

A. Office and mill.

Q. Do you know where he lives in Lockhart?

A. Yes, sir; but I have not been there.

Q. Do you know where the dog house is that is kept in the rear of his place?

A. No, sir.

Q. You never saw the blood hounds there?

A. No, sir.

Q. You never saw the bull dog belonging to Mr. Harlan?

A. No, sir; I have seen no kind of dog belonging to Mr. Harlan in Lockhart.

Q. You do not know what the blood hounds are kept there for?

A. No, sir; I do not know anything about that.

Q. Don't you know that dogs are kept there and that they are used to bring men back with?

A. No, sir; I only read about it in the Journal.

Q. Do you know it now?

A. I have never seed a dog in Lockhart that would catch a man.

Q. Do you know the difference between fox terriers and blood hounds?

A. No, sir.

Q. You do not know what a blood hound is?

A. No, sir.

Q. What sort of dogs are kept back of Mr. Harlan's house?

A. I do not know. I never seed them. I have not been around Mr. Harlan's house.

674 Q. You never saw the dogs going and coming with the buggies with Gallagher and others?

A. No, sir. Whenever I saw Mr. Gallaher he was around the office or the store.

Q. There was no dog or gun upon him?

A. No, sir; no dog or gun as far as my eye could see.

Q. The main opportunity you have for seeing in the day time is around the edgers?

A. A great many times I am not working. I knock around the town, the store, at Florala, but I have never seen Mr. Gallagher or Mr. Harlan with a dog.

Q. You never have seen any blood hounds around there at all?

A. No, sir. I would not see one if I was to see him.

Q. Do you know that Mr. Harlan keeps some dogs behind his house?

A. No, sir; I do not know anything about that.

Q. Now, you were not down here last week or the week before?

A. I have not been here in Pensacola for quite awhile.

Q. Were you here last week or the week before?

A. I was over here week before last.
Q. Were you a witness here?
A. Where.
A. Answer the question yes or no?
A. No, sir.
Q. When did you come down here the last time?
A. Last night.
Q. Did—who came with you?
A. There was several came down.
Q. Did Mr. Harlan come with you?
A. Mr. Harlan come on the same train.
575 Q. Did you come down with Mr. Harlan last night on the same train?
A. I came down last night.
Q. Did you come down with Mr. Harlan?
A. No, sir; I did not come with Mr. Harlan.
Q. Did you see Mr. Harlan on the train?
A. Mr. Harlan was at Florala when I left, that is when I got ready to get on board the train, and the last I seen of Mr. Harlan there he was standing on the ground by the depot. Whether he come I cannot say, but I come by myself.
Q. You cannot say whether he came or not?
A. No; because when I seed Mr. Harlan he—there was a freight train backing up and liked to run over him and I was sitting looking out the window and he jumped out of the way.
Q. When did you talk to Mr. Harlan about coming down here?
A. Not over four weeks; about four weeks ago I met him in the office about some business and I and him ain't had no talk in four weeks.
Q. Now, do you know Arthur Buckley?
A. No, sir.
Q. Do you know Herman Osmenski?
A. No, sir.
Q. Do you know Chas. Haas?
A. No, sir.
Q. Do you know John Smith?
A. No, sir.
Q. Do you know Emanuel Jordsman?
A. No, sir.
Q. Do you know William Keller?
A. No, sir.
576 Q. Do you know Trulich Mehiley?
A. No, sir.

Q. Did you ever see one of these on one of these trips to Florala and up at Lockhart at night?

A. If I was to see his face I would probably know it.

Q. Did you ever see them down at the camps when you would go down there on your excursions?

A. I have seed these foreigners what come there, but as to knowing them by name I do not know them.

Q. Did you ever see any of the boys mentioned whipped down there?

A. No, sir; I ain't seed nobody whipped.

Thereupon the defendants to maintain the issues in their behalf, called as a witness one D. A. WILLIAMS, who, having been duly sworn, testified as follows, to-wit:

Direct Examination.

Q. Where are you employed?

A. Jackson Lumber Company, at Lockhart.

Q. How long have you been employed there?

A. Four years.

Q. Continuously?

A. Yes, sir.

Q. What kind of employment are you doing; what kind of work are you doing?

A. My general work is to furnish them in cross ties for railroads.

577 Q. Was your work out at the log camps or where?

A. Sometimes.

Q. Where were you working during the month of June and July last?

A. Mostly then at the mill quarters. I had some work out in the month of June, probably might have been latter part of May, had some cross ties out there getting out.

Q. Were you accustomed to seeing foreigners at work there during the months of June and July of this year?

A. Yes, sir; I was out there a few days.

Q. Did these foreigners have any restrictions thrown around them so far as you could observe?

A. I could not observe any.

Q. They went and came the same as the rest of the people?

A. Yes, sir.

Q. Did they have guards over them?

A. No, sir.

Q. Do you know how long—how long have you known Mr. Harlan?

A. I have known him for over four years.

Q. Do you know what his general reputation among the men out there and the laborers and employees is for humanity and—

A. His character—

Q. Do you know it—his reputation?

A. Yes, sir.

Q. State what it is?

A. His reputation generally is good and very good so far as treatment of the laborers is concerned.

Q. Does he make any distinction between the men in his treatment of the men; does he make any distinction?

A. No, sir.

478 Q. Were you or not around the log camps a good deal?

A. Not a great deal. A good many times my work called me out there.

Q. Did you circulate among the men out there more or less?

A. My work generally in the woods out about the log camps was on the spur track.

Q. Was any men working on the spur work?

A. Yes, sir.

Q. What were they doing?

A. Some digging up track where they had to put down new track—some sawing logs where in the way and some laying new track and some taking up old track, etc.

Q. Were these men foreigners or natives?

A. Some foreigners.

Q. Some foreigners and some natives?

A. Yes, sir.

Q. Who was boss?

A. You mean that worked in the gang?

Q. Yes.

A. Mr. Step worked two or three foreigners.

Q. When was that?

A. Latter part of May and first of June.

Q. Did you observe at any time any mistreatment of the men by any of the foremen?

A. No, sir.

Q. You never observed any mistreatment?

A. No, sir.

Q. Did the men seemed to be imprisoned and in the custody of some one?

A. No, sir; not as I have seen.

579 Q. Did you hear any complaint of their being imprisoned by anybody?

A. No, sir.

Q. They did not look like prisoners to you?

A. No, sir; not to me.

Cross Examination.

Q. Were you a boss when you were at the camp?

A. I was furnishing the Jackson Lumber Company with cross ties and I had hands of my own and cut the ties.

Q. You had hands employed yourself?

A. No, sir.

Q. You were not working any foreigners?

A. No, sir.

Q. You were not working anybody that the other bosses turned over to you?

A. No, sir.

Q. You were simply a contract man?

A. Yes, sir.

Q. Then these other bosses had nothing to do with your men?

A. No, sir.

Q. You worked independently of them?

A. Yes, sir.

Q. How much opportunity did you have of seeing the other bosses working men—were they working them anywhere around you?

A. I was cutting cross ties on the track.

Q. Was that anywhere around the turpentine camp?

A. No, sir.

Q. How far was that?

A. It was in the turpentine woods.

580 Q. I mean around where the men were working?

A. I did not see any men at work in the turpentine.

Q. Then your opportunities for observing—

A. Where I was working they had no turpentine work going on—nothing but railroading.

Q. You were simply getting cross ties and taking up old line of railroad?

A. No, sir; I was furnishing new ties.

Q. Your crew of men was no where working with the turpentine men?

A. No, sir.

Q. How long were you working out there this way?

A. More or less four or five weeks.

Q. Was that in May?

A. Long latter part of May.

Q. Where you working in July?

A. My work generally called me back towards the mill.

Q. Then it was in and around the mill?

A. Yes, sir.

Q. You did not have much opportunity to see how the men were kept, whether they were held or let go down there in the month of July—I mean at the log camp or the turpentine camp.

A. No, sir.

Q. You did not have any opportunity for that?

A. No, sir.

Q. All you know is that you have seen the men going and coming back and forth from Lockhart to the camp?

A. Yes, sir; and while I was out in the woods I have seen foreigners go to the mills and come back.

Q. Did these foreigners, these crews, didn't they always have bosses with them going and coming back?

A. No, sir; they generally come back—

581 Q. Where was the foreman when they were going and coming?

A. Sometimes he would be behind and sometimes in front of them.

Q. These men were a sort of rough class of foreigners, were they not?

A. They did not seem to be so very rough.

Q. Did they go to your church on Sunday, any of them?

A. No, sir.

Q. Didn't you understand, or don't you know, that there was a good deal of disturbance among them, fighting and fussing?

A. No, sir.

Q. Tell us why these foremen of these foreigners carried guns along? Was it not necessary?

A. I did not never see any foremens carry any guns.

Q. Did you see much of Mr. Gallagher?

A. I have been with him right smart.

Q. I am talking about in the month of July?

A. No, sir.

Q. Did you ever see Bellinger down there then?

A. Yes, sir; I know him.

Q. Did you see much of him in the month of July in the camps?

A. No, sir.

Q. Did you see much of Big Harry?

A. I was not personally acquainted with him.

Q. How many nights in July did you stay at the log camp?

A. None.

Q. You went home every morning?

A. Yes, sir.

582

Thereupon the defendants to maintain the issues in their behalf called as a witness one STEVE WATTS, who, having been duly sworn, testified as follows:

Direct Examination.

Q. Where are you employed?

A. Jackson Lumber Company.

Q. How long have you been employed there?

A. Three years.

Q. Are you in a position to say what Mr. Harlan's general reputation is among the laborers out there for humane treatment of them or otherwise?

A. Yes, sir.

Q. Is it good or bad?

A. Good.

Q. He is generally liked by the men—laborers?

A. Yes, sir; all I know anything about.

Q. What did you work at?

A. At the mill now.

Q. Did you work anywhere other than at the mill at any time?

A. Yes, sir.

Q. Where?

A. At the log camp.

Q. So far as your observation goes does Mr. Harlan make any distinction in the treatment of his men out there?

A. No, sir.

Q. They are all treated with kindness, etc.?

A. Yes, sir.

Q. Did you ever hear anything to the contrary out there?

A. No, sir. The only thing I have heard is in the Pensacola Journal. I read it in the Pensacola Journal.

Q. It was a surprise to you to learn of such a condition?

A. Yes, sir; a surprise to me.

583 Q. You had been about there a good deal, had you?

A. Yes, sir.

Q. Were the whites and blacks worked together?

A. Yes, sir.

Q. Did they occupy the same quarters?

A. The same quarters—they staid in different camps—that is they staid in different cars.

Q. Did they mingle in the day?

A. Yes, sir.

Cross Examination.

Q. How long since you worked at the lumber camp?

A. I am working there now.

Q. Do you mean at Lockhart or down in the woods?

A. At Lockhart.

Q. I am referring to the camp known as the log camp; when did you work there?

A. Been about six months ago.

Q. Were you there in July?

A. No, sir.

Q. Who have you heard discussing about Mr. Harlan being so good and kind to these foreigners—talking about it?

A. Everybody that works for him talks about him being a good man to work for.

Q. Were they talking about the foreigners who had run away and were brought back?

A. No, sir.

584

Thereupon the defendants to maintain the issues in their behalf called as a witness one J. T. MANNING, who, having been duly sworn, testified as follows:

Direct Examination.

Q. Where do you live?
A. Florala.
Q. How long have you lived there?
A. About thirty-one years.
Q. What is your business?
A. I am agent for the Jackson Lumber Company.
Q. Do you have any other independent business of your own?
A. No; I work all the time for them.
Q. Do you have to depend upon the Jackson Lumber Company for a support?
A. No, I cannot say that I do.
Q. You could live independently of them?
A. I could if it was necessary, I guess, but I work for them.
Q. Now, then how long have you been at work for them?
A. Eighteen years last August. I commenced work August, 1888.
Q. Has your employment brought you in contact with the labor in the woods and around the log camps and about the mill and turpentine camps?
A. I go there frequently.
Q. In among the men?
A. Yes, sir.
Q. Have you ever observed at any time any mistreatment of the men out there about the log camps, the turpentine camps or the mill?
A. No, sir.
Q. Did you see the foreigners there at work from time to time or not?
585 A. I was not there much when the men, these foreigners, was there; at that time I was in Mississippi.
Q. Were you about Florala any of that time?
A. I came home in August.
Q. When you came home from time to time did you see any of these foreigners going and coming?
A. Yes, sir.
Q. Where did you see them?

A. I have seen some of them at the log camp and some at the turpentine camp.

Q. Did you see any about Florala?

A. Why, I cannot say that I did. I guess I have seen some of them there.

Q. Were the men at the time you were out there, did they seem to be under any restraint?

A. No, sir.

Q. How long has that mill been in operation there?

A. Going on five years since they started the work.

Q. I want you to state to this Court and jury fully, good and bad, any and everything that you have observed in the treatment of the men, the character of it and nature of it?

A. Well, it is good so far as I know—all that I have seen. I have been at work for them ever since they started the plant and before.

Q. And so far as you have observed the treatment of the men has been good?

A. Yes, sir.

Q. There never was anybody restrained of their liberties?

A. No, sir.

Q. You never saw any guards kept over the men?

A. No, sir.

586 Q. You never heard any of the foremen talking about it?

A. No.

Q. There was no reference to returning the men; did any of them talk to you about the return of the men that would go away?

A. No, sir.

Q. Nothing was said about keeping a lookout for them?

A. No, sir.

Q. Where did your business take you principally?

A. In the woods.

Q. Just state what your duties were?

A. Looking after land and helping look after the railroad and such like.

Q. You were about where the laborers were engaged at work in the woods?

A. Yes, sir; at certain times—not all the time.

Q. About how often were you among those laborers?

A. Nearly every day go to the mill or to the log roads or turpentine camps, so far as that is concerned.

Q. You have lived at Florala about thirty years, you say. You know most of the people in the community?

A. Yes. sir.

Q. You knew the various officers?

A. Yes, sir.

Q. Most of them were brought up around there, were they not?

A. No, could not say that they were.

Q. The officers?

A. No, sir; they are natives, but not brought up around there.

Q. They were natives, were they?

A. Yes, sir.

Q. And you never saw any hunting or suggestion
587 about anything of the kind directly or indirectly to
assist or look out for these men and stop them?

A. No, sir.

Q Do you know the general reputation among those men and the community generally laborers of Mr. Harlan for humanity and kind treatment of the men?

A. I do.

Q. Is it good or bad?

A. It is good.

Q. Good, is it, among the laborers and people generally?

A. Yes, sir.

Cross Examination.

Q. When did you come back from Louisiana?

A. Latter part of August.

Q. You say, Mr. Manning, that you never heard of any mistreatment of the men there at all?

A. I heard of it.

Q. You never saw it?

A. No, sir.

Q. About how often did you go down to the log camps and turpentine camps in the months of June and July?

A. I did not go at all.

Q. About what time in August did you get back?

A. I think between the 8th—

Q. Did you read when you were living in Florala about—how many papers are there there.

A. One.

588 Q. Is it a morning paper or a weekly paper?

A. It comes out weekly.

Q. Were you in the habit of reading that?

A. Yes, sir.

Q. You read that pretty closely?

A. Yes. sir.

Q. Did you ever read that article (handing paper to witness containing article?)

A. I cannot say that I remember reading it.

Q. Did you ever see anything in the paper of about the same substance?

A. I do not know that I did. When I was in Mississippi I did not take the Florala paper. I was out there four months.

Q. When you got back did you hear any discussion of the people around Florala that this paper speaks about?

A. Yes, sir.

Q. Was that all complimentary to Mr. Harlan, all that talk and conversation?

A. I never heard them say a thing about Mr. Harlan.

Q. About the conditions of the lumber camps and turpentine camps?

A. It said they had treated the men wrong out there—that was hearsay.

Q. That was the talk around Florala?

A. Yes, sir.

Q. Well, now, you say you know the various officers; they were raised around there. You know the officers of the law?

A. No; I say they are natives.

Q. I am more particular about Mr. Moneke; what is he, deputy sheriff?

589 A. Yes, sir.

Q. Do you know whether he has had blood hounds in the last year and kept them there for that purpose?

But to the asking of said question the defendants did then and there object upon the ground that it is not in cross, and is immaterial and irrelevant. But the Court did then and there overrule said objection. To which ruling of the Court the defendants did then and there except.

Q. Don't you know as a matter of fact that Moneke in the month of August, after you came back there or before there—how long were you gone, by the way?

A. Four months.

Q. Did you know that he kept dogs, Moneke?

A. No, sir.

Q. Do you know whether he used dogs in his office, performing his official duties, blood hounds?

A. No, I cannot say that I did.

Q. Can't say that you do know it?

A. No, sir.

Q. You never saw blood hounds around there?

A. Not with Moneke.

Q. You do not know that Moneke got the blood hounds from Lockhart?

A. No, sir.

Q. Do you know of any blood hounds being kept at Lockhart?

A. No, sir; cannot say that I did.

Q. You read in this paper—have you not heard people discuss it about dogs being kept there?

A. Yes, sir.

Q. What is the general reputation around Florala, where
you live, as to the instructions and directions to Mr.
590 Moneke about taking up men that have escaped from
the log camps or lumber camps?

But to the asking of said question defendants' counsel did then and there except.

Q. Was it the general rumor and was it freely discussed in your town there, speaking of the management of the Jackson Lumber Company, was it not generally known and discussed that Mr. Moneke, the deputy sheriff, had instructions from Mr. Harlan to pick up run-aways and people that had left the camp?

A. That was before I came back from Mississippi.

Q. You heard it talked about?

A. Yes, sir.

Q. And it is true that this thing was discussed and talked about in Florala?

A. Yes, sir.

Q. Now, in relation to Mr. Harlan, his treatment of the men, have you not also heard it discussed and talked in your town of Florala about his having men brought back that were in debt to them for transportation that had not paid it before they ran away?

A. I never heard Mr. Harlan's name used in it.

Q. The Jackson Lumber Company?

A. I heard that they brought men back; yes, sir.

Q. That had run away from their transportation debt—what they owed for their transportation debt?

A. Yes, sir.

Q. Who is manager of the Jackson Lumber Company?

A. Mr. Harlan.

591 Q. You know that?

A. Yes, sir.

Re-Direct Examination.

Q. Mr. Manning, all this that you heard was after this discussion came out in the paper, was it not?

A. Yes, sir.

Q. And the people were discussing what they saw in the paper, were they not?

A. I do not know just what the papers got up.

Q. They did not purport to know themselves, did they? They did not undertake to state these things themselves, did they?

A. No, sir; I never saw a man that said he knew it.

Q. Just a rumor going about and that was after these articles had come out in the paper?

A. Yes, sir; I was over in Mississippi at the time.

Q. These articles aroused the people, did it not?

A. Yes, sir.

Q. You say that you heard that Mr. Harlan had given instructions to Mr. Moneke?

A. No, sir; I do not know that I heard that at all. I heard they had brought them back.

Q. You heard that men had been carried back?

A. Yes, sir.

Q. But nobody said that Mr. Harlan was connected with it?

A. No, sir.

Q. Do you know these bosses generally?

A. Yes, sir.

Q. Do you know Mr. Lamata?

A. Yes, sir.

592 Q. What about him? Do you know what his reputation is—his character out there among the men and the people?

A. It is good.

Q. Do you know Mr. Gallagher?

A. Yes, sir.

Q. What about his?

A. He always treated his men good while I was around.

Q. Do you know what the men say of him—the men that worked under him?

A. Most of the men like him all right.

Q. How many foreigners ever talked with you about whether they liked Gallagher or not?

A. I never talked with them.

Q. Which men spoke well of Gallagher, the bosses?

A. No, sir; the men working around the camp.

Q. Who?

A. I do not know who; there is a lot of men out there, a hundred men out there.

Q. I am talking about those whom you heard speak well of Mr. Gallagher; you cannot recollect any just now?

A. No, sir; but—

Q. Who were you talking with, the natives or the foreigners?

A. The natives.

Q. You never talked with any of the foreigners?

A. No, sir.

Q. Didn't you hear of Mr. Gallagher whipping any of them?

A. Yes, sir.

Q. Were these fellows speaking well of him that
193 you heard that from?

A. No; I cannot say that it was.

Q. You heard both ways; you heard he was whipping the men and you heard that he was good to them?

A. Yes, sir; I heard he was good to his men; I know that he is good to his men.

Q. What did he whip his men for?

A. I could not say.

Q. What kind was he whipping—the natives or foreigners?

A. Foreigners, I think; that is what I heard.

Thereupon the defendants to maintain the issues in their behalf called as a witness one R. S. CORRY, who, having been duly sworn, testified as follows:

Direct Examination.

Q. Where do you live?
A. Lockhart.
Q. How long have you lived there?
A. Ever since 1903.
Q. Do you work for the Jackson Lumber Company?
A. Yes, sir.
Q. What do you do?
A. Civil engineer and superintendent of the railroad.
Q. Do your duties take you over the line of the railroad?
A. Yes, sir.
Q. Did you visit the log camp frequently?
A. Yes, sir; I was around there and about there quite often.

594 Q. The turpentine camps?
A. Nor, sir.

Q. Did you see the men and talk to them and did any of them talk with you?
A. No, I hardly ever had any conversation with the men, that is with the laborers.
Q. Have you observed these men at work under their bosses?
A. Yes, sir.
Q. Have you been about at various times when they were engaged in their employment?
A. Yes, sir.
Q. Were you among them during the months of June and July of this year?
A. I suppose I was, but I cannot recall any particular time.
Q. What was the treatment of the men so far as you may have observed?
A. I have never seen any mistreatment at all.
Q. Did you know of any of these reported transactions prior to the time of the newspaper articles came out announcing them?
A. The first I knew; I was off on a vacation and read them in the newspaper.
Q. It was news to you, was it?

A. Yes, sir.

Q. Do you know the general reputation among the men of Mr. Harlan for humane treatment of the men?

A. As far as I have seen it was very humane.

Q. Was he considerate of his men?

A. Yes, sir.

Q. You have had an opportunity to observe his relation to his men?

295 A. Yes, sir.

Q. A good deal?

A. Yes, sir.

Q. Of all classes?

A. Yes, sir.

Q. And foreigners?

A. Well, yes, sir.

Q. And he has been universally kind to them and considerate?

A. Yes, sir.

Q. Did you ever hear him or any of the foremen say anything about trying to hold back any of the men in custody or keep them there?

A. No, sir.

Q. Have you observed those people going and coming from time to time?

A. Well, I have seen them passing about, going between the camp and town. I never paid any very particular attention to them.

Q. You saw them going and coming?

A. I have seen them in town and going back towards the camp.

Q. Were they in the custody or control of any of the bosses at that time?

A. I did not see any one that seemed to be acting in that capacity.

Q. They were going where their inclination led them?

A. Yes, sir.

Q. Untramelled?

A. Yes, sir.

Q. Foreigners were included in those men?

A. Yes, sir.

596 Q. Do you know how Mr. Lamata stands among the men up there?

A. As well as I know he stands all right.

Q. You never heard any complaints against him?

A. No, sir.

Q. Do you know how Mr. Gallagher stands among them?

A. He stands all right as far as I know.

Cross Examination.

Q. How much do you know?

A. That is all I know.

Q. It is your own personal experience?

A. Yes, sir.

Q. Mr. Harlan was good to you?

A. I have seen instances where he was good to others.

Q. In what way?

A. In kindness shown them.

Q. Do you know of his having sent any telegrams down to the sheriff or deputy sheriff to hold men until he could send for them?

A. No, sir.

Q. Your ear is deaf to those things?

A. I have heard them.

Q. You have heard it discussed about Mr. Harlan?

A. I have heard the newspaper reports.

Q. Have you not heard it from other sources than newspaper reports; do you go to Florala?

A. Not often.

Q. You confine your operations to Lockhart and wherever they send you around there?

A. Yes, sir.

Q. Have you not heard that these Hungarians
597 and these people brought out from New York tried
to get away from the company before they paid
their transportation?

A. As I said before the first I knew of it was the newspaper reports.

Q. Have you not heard it discussed since then? Have you not heard the bosses talking about it?

A. No, sir.

Q. How often are you with Gallagher and Lamata?

A. Not very often.

Q. Your duties are independent, separate and different from theirs?

A. Yes, sir.

Q. Did you ever visit Lamata in his turpentine camp, where he was running a crowd of men?

A. No, sir.

Q. You never heard him discussed or heard anybody discuss about his sending Huggins down into Florida for some men who had run away?

A. No, sir.

Q. Did you ever hear of his being anxious to get two boys away from there about the time the consul visited the camp?

A. No, sir; only the newspaper.

A. Did you hear the newspaper say anything about that?

A. I think I saw something about it in the newspaper.

Q. Which one?

A. I do not know.

Q. How long ago?

A. Some two or three weeks ago.

Q. In the report of this trial down here?

A. Yes, sir.

598 Q. You had never read in the papers about it before then?

A. No, sir.

Q. Do you read the Florala paper?

A. I see a copy once in three months.

Q. Did you get a copy about the 22nd of last July ?

A. No, sir.

Q. Now, name some of the Hungarians that you have taken the trouble to go to and discuss the character of Lamata and Gallagher?

A. I have not discussed it with any of them.

Q. Then what you know of the general reputation is what you see and know of these men yourself?

A. Yes, sir.

Q. As a matter of fact have you never seen Grace and Gallagher bring anybody back?

A. No, sir.

Q. You lived at Lockhart?

A. Yes, sir.

Q. Do you know where Mr. Harlan lives?

A. Yes, sir.

Q. Do you know what is kept in the rear of his house?

A. Yes, sir.

Q. What?

A. Some dogs kept there.

Q. What kind of dogs?

A. I do not know what kind; they are hounds.

Q. You are a man of affairs. did you ever hunt yourself any?

A. Not much.

Q. Do you know the difference between hounds and bull dogs?

A. Yes, sir.

Q. Were these bull dogs or blood hounds?

599 A. They were not bull dogs. They were hounds. I do not know whether they were blood hounds or not.

Q. Do you know for what use and purpose they were kept?

A. To trace criminals. I do not know what else.

Q. Did you ever know or did you ever discuss with any one that they were used to trail men who had escaped from their debt?

A. I never heard that they were used for that.

Q. Did you ever know of their being loaned to anybody.

A. I do not think I did.

Q. Outside of the papers now, what was in the air since the middle of July—current all around there—talked and discussed about people generally, about these foreigners being brought down there, about their proclivities for work—have you not heard it discussed?

But defendants did then and there object to said question because it seeks to establish a reputation that arose since the commission of the offense if it arose at all, and upon a reputation established upon communications in the neuspapers.

But the Court did then and there overrule said objection, to which ruling of the Court the defendants did then and there object.

A. I have not heard of it.

Q. I am not talking about what you have said of Gallagher or what Gallagher said to you, but have you heard outside of the newspapers—now, have you not heard it discussed and talked about there by the public about their going after men and bringing them back?

A. I did not know anything about his having gone.

Q. Not of your own knowledge. I am talking of

600 the discussion. You said he was good and kind. Have you not heard anything to the contrary?

A. I heard it, but it was only rumor.

Q. Exactly as the other—you only know the good treatment from rumor?

A. Yes, sir.

Q. You have heard it talked that he would go after men and bring them back?

A. I have not heard that talked.

Q. What kind of talk have you heard about Gallagher?

A. I have heard of his bad treatment of men, but I have never seen it.

Q. You state your opportunities for seeing were limited. You were down there surveying when you were down there?

A. Yes, sir; it was not my business to inquire into the treatment of the men.

Q. Is it not general talk in Lockhart and Florala and the other places around there that these bosses carry guns to protect themselves when they are working these men?

A. What I know myself; I have heard that, but I have heard more through the newspapers than anything else.

Q. You have not heard other people talk about it?

A. I do not know as I have.

The defendants then and there moved that the statement that it was based upon what he had heard through the newspapers be stricken out, which motion was granted.

Q. You say you have heard about Gallagher going after people and bring them back?

A. I heard it first in the newspapers.

601 Q. You did not hear it in July?

A. No, sir.

Q. Where were you in July?

A. I was in Lockhart in July. The 1st—I think the first it come out in the newspapers was in August. I was off on a vacation at the time.

Q. Did you ever hear any discussion about a man named Albert and a man by the name of Krum and a man by the name of Barsoda being taken out of jail and brought back to work out the accounts?

A. No, sir.

Q. Taken out of jail at Florala?

A. No, sir. It might have been done while I was off.

Q. Did you ever hear any talk or discussion about a telegram that was sent to the deputy sheriff to bring back two men from Harlan to John Atwell to hold two men, and that he was going to send after them—two foreigners?

A. Yes, I heard of that telegram.

Q. Was that not in July?

A. I did not hear of it until quite recently. I did not hear of it then. I did not know a thing about it; that a telegram existed.

Q. Where were you on the 21st of July?

A. I do not remember what time I went off on my vacation. I think I was in Lockhart at that time.

Q. You do not remember the incident of these two men being brought back; didn't you hear it discussed about the time they were brought back?

A. I do not remember a thing about that.

Q. Did you hear it discussed about bringing back another
boy—a foreigner that had been overtaken down
602 there in the neighborhood of Paul's, by Dr. Grace
and Gallagher?

A. No, sir.

Q. Who have you discussed with about Gallagher's good treatment of his men and his good reputation—Gallagher himself?

A. No; I have had a lot of men tell me that.

Q. What kind of men?

A. Men in the employ of the company.

Q. Foremen?

A. Foremen and laborers, too.

Q. Any foreign laborers?

A. No, I have not had anything to do with that class of men.

Re-Direct Examination.

Q. You spoke of some dogs. Do you know how long those dogs have been there?

A. No, sir; I do not recollect just how long they have been there.

Q. Do you know about the time they began to work foreigners up there?

A. Along sometime in the summer they brought the first ones down.

Q. Were they there before they began to work the foreigners?

A. Yes, sir; I remember bringing one dog there myself—that was sometime in the early part of last year.

Q. You know that one had been there a long time before the foreigners ever came there?

A. All of them had.

Q. Do you know where this dog came from?

603 A. That I brought?

Q. Yes, sir.

A. From de Funiak Springs.

Q. What time did you carry it there?

A. Over a year ago.

Q. Do you know anything about the others?

A. No, sir; nothing about them.

Q. Now, these remarks that you have been interrogated about; were they or not rumors since the time of the alleged commission of this offense?

A. Yes, sir.

Q. Were or not so far as you learned those rumors based upon the reports of the newspapers?

A. I suppose they was; I could not state as to that.

Q. They did not purport to be based upon any knowledge of the facts?

A. No, sir.

Q. Of these parties?

A. No, sir.

Re-Cross Examination.

Q. What kind of a dog was that you carried up there?

A. It was a hound.

Q. Where did you get it?

A. It was a young dog pup.

Q. Where did you get it?

A. De Funiak Springs.

Q. From whom?

A. I think it was bought from the sheriff down
604 there. I do not know who it was.

Q. Do you know whether he raised that dog or not?

A. I could not tell you. I know that Mr. Harlan asked me to take it down.

Q. Bought from the sheriff, was it for Mr. Harlan?

A. That is my impression. I would not say positively who it was bought from.

Re-Direct Examination.

Q. Do you know Mr. John Ward, a carpenter at de Funiak Springs?

A. No, sir.

Thereupon the defendants to maintain the issues in their behalf called as a witness one W. C. MCLAUCHLIN, who, having been duly sworn, testified as follows:

Direct Examination.

Q. Where do you reside?
A. Florala, Alabama.
Q. How long have you resided there?
A. About eight years.
Q. What is your business?
A. I am in the turpentine and saw mill business.
Q. Have you ever done any work for the Jackson Lumber Company?
A. No, sir.
605 Q. Do you know—have you ever been through the works, camps, etc., of the Jackson Lumber Company?
A. Yes, sir.
Q. Often?.
A. Yes, sir, frequently.
Q. Do you know Mr. W. S. Harlan?
A. Yes, sir.
Q. Do you know Robert Gallagher?
A. Yes, sir.
Q. Do you know Lamata?
A. Yes, sir.
Q. Do you know anything of the general reputation among the employees of these three men for humanity and kind treatment of the men under them?
A. Yes, sir.
Q. What is it?
A. It is good.
Q. Did you ever go there to make any inquiries and ascertain from the men yourself as to what the conditions were?
A. Yes, sir; I did one time.
Q. Did you go among the foreigners?
A. Yes, sir.
Q. Whom did you go with?
A. With Mr. Hughes and Dr. Trammel.
Q. You say you interviewed some of them?
A. Yes, sir.
Q. Where were they when you interviewed them?
A. First in the woods and then in the camp.
Q. Were there a number of them present?

A. Yes, sir.

606 Q. Were any bosses or foremen with them at the time of your interview?

A. One boss, in the woods, Mr. Bellinger.

Q. Where else did you interview them?

A. At the dining cars.

Q. In the cars or outside?

A. Both.

Q. Were there any foremen there at that time?

A. No, sir; not that I know of.

Q. What inquiries did you make of them?

A. We asked them as to their treatment.

Q. What did they say?

A. Said it was good.

Q. You went there to satisfy yourself as to what the conditions were?

A. Yes, sir.

Q. Had any foremen or bosses asked you to go there?

A. Mr. Hughes asked me to go.

Q. Mr. J. E. Hughes asked you to go with him?

A. Yes, sir.

Q Mr Hughes is an old citizen in Florala?

A. Yes, sir.

Q Now, did you take dinner there at all?

A. Yes, sir; we took dinner there that day in the log camp.

Q. Were there a number of men at the table?

A. Yes, sir.

Q. They heard what was going on; did they hear you making these inquiries?

A. Those next to us did.

Q. Were you talking in an ordinary tone so as to be heard across the dining table and up and down?

607 A. Yes, sir.

Q. Did anybody make any protest or state anything to the contrary?

A. No, sir.

Q. You talked to a number of them?

A. Yes, sir.

Q. Now, Mr. McLauchlin, did you or not observe any of these men coming into Florala and going away from there during the months of June and July, foreigners?

A. Yes, sir.

Q. Did anybody have them in custody?

A. No, sir.

Q. Did anybody seem to have surveillance over them, watch them?

A. No, sir.

Q. They seemed to go and come at will?

A. Yes, sir.

Q. Did you observe in going through the camps anything to indicate to you that these men were under any kind of restraint, moral or otherwise?

A. No, sir.

Q. You saw no indication of any intimidation of the men?

A. No, sir.

Q. Did they seem to be intimidated when you were talking to them?

A. Yes, sir.

Q. They talked perfectly freely of the conditions and what existed?

A. Yes, sir.

Q. And how they were treated?

A. Yes, sir.

608 Q. Did they say that they came and went at will?

A. Yes, sir.

Q. When and as they pleased?

A. Yes, sir.

Q. Have you ever held any official position?

A. At Florala?

Q. Yes, sir.

A. I was mayor once.

Q. What is your age?

A. Sixty-two.

Cross Examination.

Q. Were you living there in June and July of this year?

A. Yes, sir.

Q. What time was it that you visited the camp there at the invitation of Mr. Hughes?

A. I think about a month ago. I do not remember exactly.

Q. As a matter of fact that was after this prosecution started, was it?

A. Yes, sir.

Q. You say you went into the woods and talked to the men?

A. Yes, sir.

Q. What men did you talk to?

A. I do not remember their names. I talked to the men where they were following the logs on the cars.

Q. What were their names?

A. I do not know.

Q. Who else did you talk to?

A. Talked to a good many men; I did not know any of them.

609 Q. In what language did you talk?

A. In the English language.

Q. Did you have any interpreter with you?

A. No, sir; not in the woods. We talked through an interpreter at the cars.

Q. Who was the interpreter?

A. Mr. Newlander.

Q. One of the defendants here?

A. I do not know. He was a clerk in the office there.

Q. You say that Dr. Trammel accompanied you on this trip?

A. He went with us from Lockhart.

Q. Who is Dr. Trammel; what position does he occupy there?

A. He is the physician for the Jackson Lumber Company.

Q. That attends to the physical needs of the men?

A. Yes, sir.

Q. Do you read the Florala papers?

A. Yes, sir.

Q. How many papers are there published there?

A. One.

Q. Did you read the papers there during the months of June, July and August of this year?

A. Yes, sir.

(Paper here handed to witness containing article, who reads the article to himself.)

Q. Do you remember reading that article in the Florala paper?

A. No, sir; I do not.

Q. You do not remember reading that?

A. No, sir.

Q. Now, you spoke of men coming down to Florala and going freely. When was that?

610 A. That was since they opened up there.

Q. Do you know Mr. Lamata?

A. Yes, sir.

Q. Do you know Mr. Bellinger?

A. Yes, sir.

Q. Do you know Mr. Gallagher?

A. Yes, sir.

Q. Do you know Mr. Sandor?

A. I never saw him until I came down here.

Q. Do you know Mr. Newlander?

A. Yes, sir; I saw him that day.

Q. Did you know Mr. Fagan?

A. No, sir.

Q. Did you know Angelo?

A. No, sir.

Q. Did you see any of these gentlemen that I have mentioned around Florala?

A. I have seen Mr. Bellinger and Mr. Lamata.

Q. You have seen Mr. Bellinger and Mr. Lamata?

A. And Mr Gallagher

Q. When were they over there as a general thing?

A. Been seeing them for the last three years.

Q. Did they come over there frequently?

A. Bellinger, Lamata and Mr. Gallagher.

Q. Did they come over there frequently?

A. Yes, sir.

Q. Were they over there during the time these men were there that you speak of?

A. Well, I do not know. I do not remember of seeing them together at any time.

611 Q. When were these men at Florala; what days generally?

A. Generally on Saturdays and Mondays.

Q. Now, you spoke of the good reputation of Mr. Gallagher and Mr. Lamata?

A. Yes, sir.

Q. How long have you known Mr. Lamata?

A. I have known him for three years.

Q. How long have you known Mr. Gallagher?

A. About the same time.

Q. Where did you get your knowledge of their good reputation for kind treatment of the men?

A. Well, I just got it from general talk about the camps. I never did inquire particularly about them.

Q. As a matter of fact, didn't you get your knowledge of their general reputation for kind treatment of the men from your own knowledge of the men themselves, your acquaintance with them?

A. That had some impression on me.

Q. How many were at the dinner table that you were there and talked to the men?

A. I think fifty at the same table I was at.

Q. Did you see Manuel Jordsman there that day?

A. I do not know him.

Q. Did you see Trulich Mihaley?

A. I do not know all of them.

Q. Did you see John Davis there?

A. No, sir.

Q. Did you see William Keller there?

A. No, sir.

Q. Did you see Arthur Bucklery there?

A. No, sir.

Q. Did you see Charley Haas there?

612 A. I do not know them by that name at all.

Q. Did the men discuss in your presence the fact that Mr. Gallagher had been engaged in bringing men back that had run away?

A. No, sir.

Q. Did you hear that discussed over there?

A. No, sir.

Q. Have you ever heard that discussed?

A. Yes, sir.

Q. When?

A. When I came down here before.

Q. Had you not heard it discussed before that time?

A. The first I ever knew about it was what I read in the papers.

Q. When was that?

A. Two or three months ago.

Q. In what papers?

A. The Pensacola Journal.

Q. Didn't you see some publications about it in the Florala paper?

A. I saw a little piece in the Florala paper after that.

Q. Now, as a matter of fact have you not heard the conduct of Mr. Gallagher and Lamata and Harlan and others, Bellinger and others, of the bosses there at the Jackson Lumber Company camps—have you not heard their reputations discussed and their conduct with reference to the return of men who had run away from their contracts around Florala?

A. Not until recently; no, sir. I have heard a great deal about it since these trials have been going on.

613 Q. You say about two months ago was the first you read of these things in the paper?

A. Yes, sir.

Q. After that time you heard some discussion about it then?

A. Yes, sir.

Q. What did the people say about it then?

A. The people that I heard speak of it did not believe it.

Q. Now, as a matter of fact, didn't you know and was it not generally discussed around Florala the fact that the Jackson Lumber Company kept a pack of blood hounds to run men who ran away from their contracts?

A. No, sir.

Q. Nave you not seen Mr. Moneke, the deputy sheriff, use those hounds?

A. No, sir.

Q. Didn't you testify here on the last trial?

A. I heard of his using them one time, but I never have seen them, but I heard of Mr. Moneke's using the dogs on one occasion, but that was a good while ago.

Q. Where did he get those dogs from?

A. He said he got them at Lockhart; I do not know, though—I just heard that on the streets.

Q. How often have you visited the camps in the past year?

A. Three or four times.

Q. On what occasions; name the times and give us the dates.

A. The only time I ever stopped there was the time I have told you about, when I went with Mr. Hughes.

Q. Who is Mr. Hughes?

A. He is a naval stores owner.

Q. What connection has he got with the Jackson Lumber Company?

A. None at all.

614 Q. How came him to invite you to go over there?

A. I think Dr. Trammel asked him to bring me over there with him.

Re-Direct Examination.

Q. Mr. Hughes is an old citizen of Florala?

A. Yes, sir.

Q. He owns the principal part of the town, does he?

A. Mr. Hughes?

Q. Yes, sir.

A. Yes, sir.

Q. You are a property owner in that town are you?

A. Yes, sir.

Thereupon the defendants to maintain the issues in their behalf called as a witness one J. A. McLEAN, who, having been duly sworn, testified as follows:

Direct Examination.

Q. Where do you live?

A. Florala, Alabama.

Q. How long have you lived there?

A. About six or seven years.

Q. Do you hold any official position?

A. In the county?

Q. Yes, sir; anywhere?

615 A, I belong to the Board of County Commissioners of Covington County.

Q. How long have you been such?

A. Two years in February.

Q. Two years last February?

A. This next February.

Q. Do you know the general reputation of Mr. W. S. Harlan, Mr Lamaca and Mr. Gallagher among the employees with reference to their treatment of them?

A. All been very good, real good. I never have heard anything until this suit was started.

Q. You never heard anything until the reports came out in the paper with respect to it?

A. No, sir.

Q. Did you ever hold any official position in Florala?

A. I was intendant in 1904.

Q. That is what we call in Florida mayor?

A. Yes, sir.

Q. Were you about Florala during the months of June and July of last year?

A. Yes, sir.

Q. Did you see the foreigners that were employed at the Jackson Lumber Company log camp going and coming to Florala?

A. I saw them frequently—a few of them.

Q. Were they under surveillance or in the custody of anybody?

A. No, sir; they seemed to be—well generally saw four or five of them together.

Q. They came and went at their will, did they?

A. Yes, sir.

Q. Did you ever hear any complaint of any of these men about any treatment up there?

616 A. Not until this came up.

Q. What is your age?

A. Sixty-four.

Cross-Examination.

Q. Where do you live?

A. Florala, Alabama.

Q. You say you have lived there for several years?

A. Yes, sir.

Q. Did you read the Florala News—I believe that is the name of the paper?

A. Yes, sir.

Q. Were you living there in June and July of this year?

A. Yes, sir.

Q. Were you reading the papers at that time?

A. Yes, sir. I do not know that I read every copy of it.

(Clipping here handed to witness to read.)

Q. Do you remember reading that article?

A. I remember reading it somewhere or something similar to that?

Q. You say that the reputation of Harlan, Gallagher and Lamata is good for kind treatment of their men?

A. Yes, sir; that is their reputation there.

Q. Where did you get that knowledge?

A. It is the general reputation, the manner in which they provided for their men quarters. I have worked some of the laborers that had been employed by them myself and I have heard them speak kindly of them.

Q. When did you work some of the laborers?

A. Some during the past year.

Q. What time during the past year?

617 A. The last one that came to me was in May.

Q. That was prior to the beginning of this prosecution, was it not?

A. I think it was; I do not remember the exact date of this prosecution.

Q. Now, how far is Florala from Lockhart?

A. About a mile.

Q. And how far is it from Florala to the camps; do you know where the camps are situated?

A. Not exactly.

Q. You never have been out there?

A. I passed through the car camps a year ago.

Q. Have you ever been out there and talked with the men in the months of June and July as to their treatment?

A. No, sir.

Q. Now, as a matter of fact you are personally acquainted with Mr. Harlan?

A. Yes, sir.

Q. And with Mr. Lamata?

A. Yes, sir.

Q. How long have you known these gentlemen?

A. Mr. Harlan since he first came there and Mr. Lamata I think two years or more.

Q. How long have you known Mr. Gallagher?

A. About the same time.

Q. Do you know anything, have you heard it discussed around Florala about the Jackson Lumber Company bringing back men who ran away from their contracts?

A. Not until after it was in the paper—that was the first I heard about it.

618 Q. In what paper?

A. Spoken of in some of the Pensacola papers. After hearing that I read some accounts of it.

Q. After you heard that then you heard it discussed among the people there about the return of these men who had run away from their contracts?

A. Yes, sir; something of that kind after these publications.

Q. Did you hear Mr. Gallagher's connection with these affairs discussed?

A. Only just what I saw in the papers.

Q. Didn't the people around Florala discuss it outside of the papers? Didn't the citizens there discuss this affair?

A. Yes, sir; to some extent.

Q. Do you know of Mr. Gallagher being connected with the return of any of these men?

A. Only through hearsay; not of my own knowledge.

Q. Was it not generally understood at Florala that the Jackson Lumber Company kept a pack of dogs as you read in the paper?

A. I heard it.

Q. For running men who had ran away from their contracts?

A. I do not know what the purpose was.

Q. I know you do not know yourself, but was it not discussed and generally understood?

A. It was known or discussed that they had dogs, but I do not know whether they knew what it was for; I do not know what it was for. It was reported that they had them. I have never seen the dogs myself and some parties in Florala I have heard them say they would get the dogs to run after parties.

Q. Didn't you hear it talked about that these dogs were used to run down men who jumped their contracts. You are not answering my question.

619 A. No, sir.

Q. Do you know Mr. Moneke?

A. Yes, sir.

Q. What is his position at Florala?

A. I think he is a deputy or some kind of constable or perhaps both.

Q. Did he use the dogs?

A. Not that I know of.

Q. You say you never have visited the Lockhart camps?

A. The mill plant—I have been in the mill plant.

Q. But out where the men work in the log camp and turpentine camp?

A. No, sir; I passed the log camp once.

Thereupon the defendants to maintain the issues in their behalf called as a witness one J. E. HUGHES, who, having been duly sworn, testified as follows:

Direct Examination.

Q. Your name is J. E. Hughes?
A. Yes, sir.
Q. Where do you reside, Mr. Hughes?
A. Florala.
Q. What is your business?
A. Collecting rents and selling lands and one thing and other.
Q. How long have you resided at Florala?
A. About forty years.
620 Q. You resided there before the Jackson Lumber Company plant was established at Lockhart?
A. Yes, sir.
Q. How long has that plant been established there?
A. Four or five years. Four years, I reckon.
Q. That plant is in Covington County, Alabama?
A. Yes, sir.
Q. The log camp, turpentine camps and mill plants?
A. Yes, sir; all in Alabama.
Q. Is it in Covington County ?
A. Yes, sir.
Q. Is Florala in Covington County, Alabama?
A. Yes, sir.
Q. Do you know Mr. W. S. Harlan?
A. Yes, sir.
Q. Do you know Robert Gallagher.
A. Yes, sir.
Q. Do you know Mr. Lamata?
A. Yes, sir.
Q. How long have you known these men?
A. I have known Mr. Harlan ever since he has been there. These other gentlemen may have been there a little while before I got acquainted with them, but I have been knowing them for the past two or three years.
Q. Do you know the general reputation of these men whose names I have mentioned among the laborers and in the community in general for kindness and humanity towards their employes?
A. Yes, sir.
Q. What is it?

A. Good.

621 Q. Have you at any time had occasion to visit the camps of the Jackson Lumber Company, the log camps?

A. Yes, sir.

Q. At whose instance did you go there?

A. I think Dr. Trammel spoke to me about going there.

Q. What was your purpose in going there?

A. Why since this racket got up here it has been said they had been mistreated out there and I suppose he wanted me to go and see how they was treated.

Q. Did you make an investigation?

A. Yes, sir.

Q. What was the character and nature of that investigation?

A. We got on a buggy and drove through the mill plant—that is through the quarters and out to the woods where they carried on the log business, loading, etc., cutting and hauling and loading on the train and out at the camps, and went through the camps and inspected them sort of like.

Q. Did you talk to the men?

A. Yes, sir.

Q. Did you talk with the laborers?

A. Yes, sir.

Q. Did you talk to them in or out of the presence of the bosses?

A. No, sir; did not talk to them in the presence of the bosses.

Q. You talked to them alone?

A. I was eating dinner—they was eating dinner when we come back out of the woods and we was asked to take a seat at the table, me and Dr. Trammel and Mr. McLauchlin, I believe, was in company together and sitting at the table. They had a very nice table—eatables of almost every kind on it.

Q. We do not care about the tables.

622 A. You want to know what they had to say about their treatment?

Q. Yes, sir.

A. In sitting there eating I asked the cook if he knew whether I was coming out that day and he said he did not and then I asked the men who was out there, I says, well, how does this table compare with the table you have—

Q. We do not care anything about what they had to eat.

The Court:

The witness evidently got a good dinner.

Q. What I want is whether you heard the men say anything about whether they were held in prison, beaten, held—

A. Yes, sir; the question was asked as to that. could they go any time they wanted to and they said they could and we asked them if they could go to Florala or anywheres else and they said they could.

Q. You are under no obligations to the Jackson Lumber Company?

A. No, sir.

Q. What are you worth? Are you a property holder in Florala?

A. Yes, sir.

Q. You are under no obligations to the Jackson Lumber Company?

A. Not a bit in the world.

Q. Did you go there for the purpose of making an independent and fearless investigation?

A. Yes, sir.

Q. Did you go there with a view to covering up or hiding anything or make it appear favorably to the company?

A. No, sir.

Q. Did you inspect the company generally?

A. Yes, sir.

Q. You made a conscientious and fearless investigation?

A. Yes, sir.

623 Q. And as far as that investigation went you could not discover from any of these men any ill treatment?

A. Not a bit.

Q. You made inquiries as to that among these laborers?

A. Yes, sir.

Q. Do you know whether these foreigners that were employed there came and went at will to Florala?

A. Well, I have seen them there on several occasions when they come and went with themselves.

Q. Were they in the custody of anybody?

A. No, sir.

Cross-Examination.

Q. When was it you made this visit Mr. Hughes?

A. I think about our weeks ago.

Re-Direct Examination.

Q. Is the country settled around and about this by farmers and other people not connected with the Jackson Lumber Company around near the company's works?

A. Yes, sir.

Q. That county is settled up there?

A. Not ovally much. They own most of the land. Before they went there a right smart of people had lands.

Q. A good many people have settled around and about there?

A. Yes, sir; but not as think [thick] as you have seen it.

Q. But there are some settlements, old citizens?

A. Yes, sir.

Q. Is there a public road or any roads leading 624 from those works?

A. Yes, sir.

Q. Where does it run?

A. The dirt road goes to Andalusia and on to Yellow River.

Q. And to Florala?

A. Yes, sir.

Q. Comes right through these works?

A. Yes, sir.

Q. Reguarly traveled road?

A. Yes, sir. Mail is carried three times a week there right along through the mill quarters.

Q. How near is the nearest settlement that you know of to these works?

A. I think a quarter of a mile, a half a mile and three-quarters.

Re-Cross Examination.

Q. How long have you lived at Florala?

A. Yes, sir.

Q. How often have you visited the mill at Lockhart?

A. Pretty often. I rent houses out and get tickets, a good many times as rent, and I go over there to have them cashed and I have various other businesses.

Q. You have some property then over at Lockhart?

A. No, sir.

Q. You have tenant houses at Lockhart?

A. No, sir.

Q. What do you go over there for rent then?

625 A. I mean this. There are men that works over there that has houses rented from me over in Florala..

Q. Who are those gentlemen that have property with you to rent?

A. Well, most of them—some negroes and white people.

Q. Does Mr. Harlan have any other there with you?

A. The men live at Florala.

Q. Does he have any houses over there with you?

A. No, sir.

Q. Do you read the papers at Florala?

A. Yes, sir.

Q. Is there a paper published there?

A. Yes, sir.

Q. Did you read this article in the Florala papers (here handing to witness copy of paper.)

A. I do not hardly think I did.

Q. You say you know the reputation of Mr. Harlan, Mr. Gallagher and Mr. Lamata?

A. Yes, sir.

Q. Who have you discussed their reputations with?

A. I do not know as I have heard it particularly discussed about it. I have been knowing them myself and others, have never talked anything wrong about them.

Q. Then as a matter of fact your knowledge is your own individual opinion about these men?

A. Of course I have got an opinion about them.

Q. And that is what you are testifying from?

A. Well, I have as much right to know as any other man there. I have been there the longest of any of them.

Q. But where do you get it now? Where do you get your general knowledge of the general reputation

626 for human treatment of the men?

A. If you were out on the streets and nobody said anything against him—

Q. You have never heard anything against these men?

A. No, sir.

Q. As a matter of fact didn't you hear that men in July were being brought back for running away from their contracts?

A. No, sir.

Q. Did you ever hear that?

A. After it was published in the Pensacola papers.

Q. You got your opinion from the Pensacola papers?

A. I did not get it out of the papers but I heard it from some one who did.

Q. Did you know that they had been engaged in bringing men back up to that time?

A. No, sir.

Q. You never heard of it?

A. No, sir.

Q. Did you know that the Jackson Lumber Company kept a pack of dogs up there?

A. No, sir.

Q. You had heard of it?

A. Yes, sir; I had heard of it, but I did not know it.

Q. The occasion when you spoke of when you went with Dr. Trammel, at his invitation, what month was that; you say it was four weeks ago?

A. No, it must have been in November.

Q. Were you invited over there in June or July?

A. No, sir.

627 Q. Who did you discuss the treatment of the men with when you were over there; can you name some of the men you talked to?

A. I was not acquainted with the men, but I talked to those men that eat at the table and some of them I could not understand, but the cook could tell me what they said

Q. Who was the cook?

A. I do not remember the cook's name. It was a man.

Q. Did he have a big voice; was there anything about his voice that attracted your attention?

A. What, the cook?

Q. Yes; did he have a fine tenor voice?

A. I think he did; I heard his name.

Q. Was his name McEarchern?

A. Might have been; I ain't certain of that.

Q. Have you seen him here?

A. No, sir; don't think I have; don't recollect it.

Q. Do you know what language he spoke to these people in?

A. No, sir; I did not understand them. He spoke in their language I reckon.

Q. Did you see Mr. Gallagher there that day?

A. No, sir.

Q. Did you see Mr. Bellinger there that day?

A. No, sir.

Q. Did you see Mr. Sandor there that day?

A. No, sir.

Q. Did you see Dr Grace there that day?
A No, sir.
Q. Did you see Mr. Lamata there that day?
A. No. sir.
Q. Did you see Harry Halverson there that day?
A. No, sir
628 Q. Did Dr. Trammel accompany you on this trip?
A. Yes, sir.

Q. You say you heard nothing of the mistreatment of the men by the Jackson Lumber Company and their foremen up to the time this exposure was started by the Pensacola Journal?
A. Never did.
Q. You never heard of it before that time?
A. No, sir.
Q. Do you know Mr. Moneke over there?
A. Yes, sir.
Q. What official position does he hold at Florala?
A. I think deputy sheriff.
Q. Did you know that he had been arresting men for the Jackson Lumber Company down there?
A. No, sir.
Q. You never heard of that?
A. I think I have heard of him making some arrests, but I did not know whether it was for Mr. Harlan's people or not—the people over there at Florala—it is incorporated.
Q. My question is did you know that he had been making arrests for the Jackson Lumber Company?
A. No, sir.
Q. You never heard of that?
A. I do not know—I do not think I did. Of course I have heard of his making arrests, but if you sued a man he would go off and bring him in.
Q. Were you living in Florala about July 19th?
A. Yes, sir.
Q. Didn't you hear it discussed there about Mr. Gallagher and Mr Sandor and Dr. Grace bringing a man through there carrying him to Lockhart under arrest?
629 A. No, sir.
Q. With the dogs?
A. No, sir.
Q. You heard nothing of that?
A. No, sir.
Q. Did you hear anything about along the nineteenth of July or about the twenty-first of July?

A. No, sir.

Q. About the same men being brought back by Mr. Gallagher?

A. No. sir; I have heard it for the last two weeks off and on but I never heard it then.

Q. What did Dr. Trammel take you over there for? Did he give you a reason for taking you over there?

A. He merely says I want you to go out in the quarters and look around and see how they people is treated out there.

Q. What did he tell you about probably being needed as a witness?

A. He never mentioned that.

Q. I believe you went in company with somebody else?

A. Mr. McLauchlin.

Thereupon the defendants to maintain the issues in their behalf called as a witness one JOHN PRICE, who having been duly sworn, testified as follows:

Direct Examination.

Q. Where do you live?

A. Florala.

630 Q. How long have you lived there?

A. Seven years.

Q. Do you hold any official position?

A. Yes, sir.

Q. What it is?

A. I am night officer there, police.

Q. How long have you held that position?

A. Ever since the first of January last.

Q. Were you there in the discharge of those duties of that office during the months of June and July of this year?

A. Yes, sir.

Q. Do you know whether the foreign employes of the Jackson Lumber Company were accustomed to come there during those months without being under surveillance of anybody?

A. Yes, sir.

Q. State to the jury how they came there—the manner?

A. They would come there first and last during the week; they would come sometimes two and three together—sometimes one together and on Saturday evenings they would come in sometimes eight and ten and twelve of them together—perhaps more than that. I never did count to see how many come in.

Q. Did you see the bosses there with them? Do you know the bosses out there?

A. Yes, sir.

Q. Were the bosses with them?

A. I never seen the bosses come in with them. I have seen the bosses in town at times when there would be a part of the men in town.

Q. Were the men there frequently without bosses?

A. Yes, sir.

631 Q. Do you know anything of the general reputation of Mr. Harlan, Mr. Robert Gallagher and Mr. Lamater in respect to the treatment of the laborers out there?

A. I do.

Q. What is it?

A. It is good.

Q. Have you ever talked to any of the men yourself in regard to it?

A. I have never talked with any of the foreigners in regard to it. I have with other parties that comes to town and got in trouble and got drunk and have to be locked up. They would ask to invite Mr. Harlan and Mr. Gallagher and Mr. Lamater to get them out of the mayor's court.

Q. Did you ever at any time have any intimation, communication, instruction or any request made to you by any of the bosses or anybody connected with the Jackson Lumber Company to stop any of their men?

A. No, sir.

Q. Do you know William Albert?

A. I do.

Q. Did you ever lock him up?

A. Yes, sir.

Q. How many times?

A. I could not say; something like a dozen times, I suppose.

Q. Did he ever request you to communicate to anybody to come down to him?

A. Yes, sir.

Q. Who?

A. Mr. Gallagher.

Q. Did you request Mr. Gallagher to come?

A. Yes, sir.

632 Cross Examination.

Q. Were you such night policeman last July?

A. Yes, sir.

Q. Did you ever see Arthur Buckley, Herman Osmenski, Manuel Jordsman, William Keller, John Foster down there?

A. I do not know any of the people by their names.

Q. Did you know any of the foreigners?

A. I have seen them there (pointing to some of the defendants).

Q. You never saw any of the parties I have named? You had no instructions from the company to hold anybody?

A. No, sir.

Q. When you informed Mr. Gallagher this man was here —you informed Mr. Gallagher that this man Albert was there —what reply did you have from Mr. Gallagher?

A. He taken him out every time, I believe, except the last time.

Q. Do you know under what conditions and terms?

A. Yes, sir.

Q. What was that?

A. Well, Mr. Gallagher would notify me when I would notify him that Albert was in the lock-up—notify me to turn him out and let him go to work.

Q. You say Gallagher came after him?

A. No, sir.

Q. You do not know any particular time when Mr. Gallagher came after him?

A. One time and had a talk with him or went down—come over on his buggy.

Q. Did he go back with him that time?

A. I do not remember.

Q. Have you any authority or exercise any power under the State government of Alabama—who is the officer there that does it, that makes arrests and holds people?

633

A. Mr. Moneke acts as constable.

Q. Is he not also deputy sheriff?

A. Served papers there as deputy sheriff, I think.

Q. Now, you are around there you say a good deal and you saw a good deal of Mr. Moneke's acts as an officer didn't you?

A. Yes, sir.

Q. Did you know of his arresting a man by the name of

Krum and Barsoda and holding them there in the month of August for the Jackson Lumber Company?

A. I do not know the name. I remember a man who stayed there.

Q. Some foreigners that he held there?

A. I could not say whether they was or not.

Q. Do you know what became of them?

A. No, sir.

Q. You are acquainted with this man Penton, the barkeeper there?

A. Yes, sir.

Q. How often on Saturday nights did you see these Hungarians down there?

A. Regular thing every Saturday.

Q. In July?

A. Yes, sir.

Q. In June?

A. June and July.

Q. What time in June did you begin to see the Hungarians coming down there?

A. I do not remember exactly what time it was. It seems
to me it was about the fifteenth—something like
634 the middle of the month.

Q. Did you see them coming down in the month of May?

A. I do not remember about that.

Q. Hungarians, I am talking about; did you see any down there in April?

A. I could not say.

Q. Are you positive of seeing them there in any month—any particular month?

A. During the months of June, July and August.

Q. About the first of June, think you?

A. About the fifteenth.

Q. Do you know when the first car of foreigners came down to the Lockhart camp?

A. I know when the first ones came, but I do not know what month it was in.

Q. And you don't know of their coming down there until the first load come down there?

A. That was the first of my knowing anything about them—just after this—after the first load came in.

Q. Did you have information to catch anybody or to stop anybody or to hold anybody there for anybody?

A. No, sir.

Q. Do you know the use of any bloodhounds made of by Mr. Moneke and yourself in catching anybody?

A. No. sir; I never had anything to do with bloodhounds.

Q. Do you know of Mr. Moneke's having any blood hounds?

A. Not to my knowledge, I do not.

Q. You say that Mr. Gallagher's reputation is good as to the treatment of his men?

A. Yes, sir.

635 Q. Who have you heard discussing that reputation?

A. I have heard Mr. Fager, Mr. Bainbridge and I know myself, because I have worked a good deal under him myself.

Q. Where?

A. At the Jackson Lumber Company works.

Q. Where did you work?

A. On the log camps—on the railroad.

Q. Since the foreigners came there?

A. Not in camp since they came there.

Q. Who is this man Fager that you heard talking about these parties?

A. He is a man that loads logs out in the woods.

Q. He is the foreman out there?

A. He was not foreman at that time.

Q. What was he doing there then?

A. The man that sent logs up.

Q. Didn't he work other men—a kind of boss over other men?

A. No, sir.

A. About the only people you heard discussing Gallagher's good conduct and good treatment of the men were the men associated with you out there under Gallagher, such as Fager, Lamater and others?

A. I have heard a good many others.

Q. Have you not heard these foreigners and Hungarians complaining about the treatment they got?

A. No, sir.

Q. Have you ever talked with them about it?

A. I have never seen but one or two that I could talk to.

Q. These vast droves that you saw down there at night you could not talk to them?

A. No, sir.

636 Q. Were you a police officer on the nineteenth day of July of this year?

A. Not in day time.

Q. Did you hear discussed around about the streets among the merchants and business men of Florala the incident of Mr. Gallagher and somebody else bringing a foreigner that had run away from the camps back through there with them and that they had dogs with them?

A. No, sir.

Q. You never heard of that before in your life?

A. I have heard it talked—I have read it in the paper.

Q. Is that not a discussion—in what paper—the Florala paper?

A. No, sir.

Q. Do you ever read the Florala paper?

A. Yes, sir.

Q. Did you ever see anything in the Florala paper in July and August discussing these conditions?

A. I have seen something concerning it.

Q. And you never heard anybody in the town say anything about the conditions at the camp?

A. I might have heard it talked and never paid no attention to it.

Q. It did not strike you, or you did not pay any attention to these other incidents, the nineteenth of July, the return of that man through the town?

A. I might have heard it talked; I could not say that I did or did not. I was not looking after what occurred on the outside of the town.

Q. Did you ever hear about the telegram that Mr. Harlan sent down to Laurel Hill to deputy sheriff Atwell about stopping some foreigners?

637 A. Not until I read it in the papers.

Q. When did you read it in the papers?

A. I do not remember now whether it was in the paper or whether I heard it talked. I heard something mentioned abount the telegram, but where, what it was, the meaning of it, or what, I do not know.

Q. Did you hear that there were two men returned by Mr. Gallagher?

A. No, sir; not until this trouble got up.

Q. Are you interested in the bar at Florala?

A. No, sir.

Q. Are you connected with the bar?

A. No, sir.

Q. Do you run any kind of business?

A. None at all except day labor.

Thereupon the defendants to further maintain the issues in their behalf called as a witness one R. H. TRAMMELL, who having been duly sworn, testified as follows:

Direct Examination.

Q. Have you any profession?

A. I am a physician.

Q. Where has your practice been for the last few years?

A. I live at Lockhart and have been there for the last four years.

638 Q. The last past four years?

A. Yes, sir.

Q. In what capacity?

A. As physician.

Q. Did your duties as such physician bring you in contact with the employes generally of the Jackson Lumber Company?

A. Yes, sir.

Q. You visited all classes of them?

A. Yes, sir.

Q. Foreigners as well as natives?

A. Yes, sir.

Q. Where are you from?

A. I am a native of Alabama.

Q. Now, do you know what the general reputation of Mr. Harlan, Mr. Gallagher and Mr. Lamata is among the laborers for their treatment of them?

A. It is good.

Q. Has your contact with these laborers been such as to enable you to say whether these men have been under guard or surveillance or imprisonment in anyway?

A. Yes, sir.

Q. Have they or not?

A. They have not to my knowledge.

Q. Your position has been such as to enable you to have known it if that had been?

A. Yes, sir.

Q. These men have not been confined, kept under restrain or patrol?

A. No, sir.

Q. They went where they pleased?

A. Yes, sir.

639 Q. Did the foreigners do that?

A. Yes, sir.

Q. How do you know that they went where they pleased?

A. I saw them going to Lockhart and Florala and whenever they wanted to or rather I saw them going often.

Q. And returning when they pleased?

A. Yes, sir.

Q. Night and day?

A. Yes, sir.

Q. Did they have any bosses with them?

A. No, sir.

Q. Did you know a Bulgarian by the name of Jordsman?

A. Yes, sir.

Q. Did you attend him at any time?

A. Yes, sir.

Q. What was the trouble with him?

A. I was first called—first treated him for some trouble with his legs.

Q. Do you know the cause of the trouble with his legs?

A. The first trouble he had was from red bugs—just a swelling the first time I saw him.

Q. Was it bruised in any way?

A. No, sir.

Q. There was no bruise about it?

A. No, sir.

Q. Did you have any trouble with other men with similar legs besides that one?

A. Yes, sir; we have that trouble occasionally all the time.

Q. Could you name anybody else troubled in the same way and that had the same kind of trouble?

A. Mr. Gallagher was troubled for one that way and a couple of men there by the name of Thomas, for 640 another, and several of these foreigners came in there at the same time when this Jordsman did—I do not know their names—had the same trouble.

Q. Would red bugs alone cause such a condition of affairs as that?

A. Yes, sir.

Q. What would the condition be attributed to?

A. This condition was started with an eruption produced by the red bugs and getting into the dew and then scratching their legs. A good deal of the main cause is getting in the dew early in the morning while in this condition.

Q. You had several cases similar to this?

A. Yes, sir.

Cross Examination.

Q. I believe you were down here two weeks ago?

A. Yes, sir.

Q. And testified in the other case?

A. Yes, sir.

Q. I believe you are an employe of the Jackson Lumber Company?

A. Yes, sir.

Q. And have been such for how long?

A. About four years.

Q. You do not do any other practice except that for the Company?

A. No, sir.

Q. I believe you have in connection with your practice—you also have a hospital?

A. Yes, sir.

641 Q. Do you run that hospital yourself?

A. No, it is for the company. We only have a hospital when we have sickness that warrants it.

Q. Tell us about the treatment. Did you find that the red bugs put him in the condition to go to the hospital?

A. We did not have a hospital at that time.

Q. What did you do with him?

A. We treated him in the cars.

Q. How long did you treat him?

A. With that trouble, with the red bugs; I treated him I suppose a few days.

Q. Did that develop into anything else. Did the red bugs give him anything else?

A. He had typhoid fever after that, but that had no connection with the red bugs.

Q. How long did he have typhoid fever up to the time that he left there?

A. I do not remember exactly—probably two or three weeks.

Q. He was able to leave there, was he, after he had typhoid fever?

A. Yes, sir.

Q. You knocked that out of him pretty soon?

A. When he left there he was not entirely well.

Q. He still had fever?

A. Yes, sir.

Q. Now, doctor, were you raised in the country?

A. Yes, sir.

Q. A country boy?

A. Yes, sir.

Q. Did you ever have sore legs from red bugs?

642 A. I never had an ulceration. I have had sores from red bugs.

Q. From your experience as an individual, outside of your expert knowledge, don't you know that red bugs do not attack people except usually in places that are somewhat concealed—that is where they can get protection from the body or exposed part of the legs? Don't red bugs attack you under the arms and in the groins?

A. They have no select location.

Q. Now, what sort of an examination did you make of this man? You say that both legs were sore?

A. Yes, sir.

Q. What sort of an examination did you make at the time you were called upon to see him?

A. I told him to roll up his pants.

Q. Both legs were just alike?

A. Yes, sir.

Q. No especial difference?

A. No, sir.

Q. Was the skin broken?

A. No, sir.

Q. Were there any black or bruised places on the left or right leg?

A. No, sir.

Q. None at all?

A. No, sir.

Q. Now, you say that the reputation of these gentlemen is good?

A. I do.

Q. How long had Jordsman beeen there when you were called upon to see him about these red bugs?

643 A. I could not say; not very long.

Q. Don't you know that he had not done any work at all; had not been in the woods working at all?

A. No, sir; but he said he had been in the woods.

Q. Did he give you any reason, didn't he tell you the time when you called there what had been done to him in the car?

A. No, sir.

Q. You did not hear anything about that?

A. No, sir.

Q. Could you talk to him?

A. I spoke to him through an interpreter.

Q. Who was the interpreter?

A. I do not know.

Q. Was it Mr. Sandor?

A. It was one of the men who came down with him.

Q. Mr. Newlander ?

A. No, sir; one of the men in the car.

Q. You tell us the reputation of the men is good?

A. Yes, sir.

Q. They are also employes of that company like yourself and associated with yourself and they look after the men and you doctor the men?

A. Yes, sir.

Q. Didn't you hear in the month of July that several of the men tried to escape and did escape and were brought back?

A. Yes, sir.

Q. By whom?

A. It was a matter of general rumor.

Q. I mean as to who brought them back?

A. Why, Mr. Gallagher, Dr. Grace and Mr. Sandor. The first I saw of it was in the Pensacola Journal.

644 Q. That was the first you saw of it?

A. Yes, sir.

Q. Where do you stay?

A. At Lockhart.

Q. Now, have you not talked and heard these men discuss it themselves about bringing them back before you saw it in the paper?

A. No, sir.

Q. Where were you on the nineteenth of July?

A. During that time I was at Lockhart all the time and visiting the camp every day; we had a good deal of sickness out there.

Q. What kind of sickness?

A. Bowel trouble and sickness.

Q. Didn't you say it was typhoid fever at the last trial?

A. I said a good many had fever.

Q. You had a hospital to treat the men as they came in?

A. Yes, sir.

Q. Who ran that hospital?

A. Why, the Jackson Lumber Company.

Q. That was their institution. Do you know whether the men paid—what was taxed or charged against each man, his wages?

A. Each man was taxed fifty cents per month, single men and married men were taxed one dollar.

Q. During the month of July about how many employes were there?

A. I think about six to eight hundred; I could not state as to that.

Q. Were there seven hundred men?

645 A. I judge so.

Q. Then the income for the hospital was about one thousand to twelve hundred dollars per month from that number of men?

A. I do not see how you can figure it that way.

Q. Well, fifty cents for, say half three hundred and fifty and the other half—now how many men was there in all?

A. I say I do not know; six or eight hundred men.

Q. Did you say at the last trial, or did you give us the number of men?

A. I said six or eight hundred men.

Q. How many of those men had families?

A. I would judge about one-third.

Q. That one-third would be charged one dollar and a half?

A. Yes, sir.

Q. What was the charge for insurance in addition to that?

A. The insurance runs from fifty cents up, according to the wages of the men. I think the man that gets one dollar and a quarter per day he pays fifty cents per month.

Q. Well, now a man was taxed that way whether he went to the hospital or not?

A. That had not anything to do with the hospital.

Q. Was that the basis of your compensation—what these men paid for hospital dues?

A. No, sir.

Q. You had nothing to do with them?

A. No, sir.

Q. You did not get anything of that?

A. No, sir.

Q. Now, doctor, you say you do not know whether you were there on the nineteenth of July when these

646 men brought this man Mihaley back?

A. I cannot say where I was on the nineteenth of July. I was at Lockhart and the camps together, because I was at both places every day.

Q. Do you know when Gallagher, Grace and Sandor brought somebody back to the office?

A. No, sir.

Q. You were not there then?

A. No, sir.

Q. You heard about that?

A. I heard of it. The first I saw of it was in the Journal.

Q. Did you hear about the telegram sent by Mr. Harlan to the deputy sheriff by the name of Atwell at Laurel Hill to hold two men?

A. No, sir.

Q. You never read of that even in the paper?

A. Yes, sir.

Q. What did you know about or hear about or what did you see with reference to bringing back two foreigners about the twenty-first of July by Gallagher and another man?

A. I heard nothing of that whatever around Lockhart.

Q. Do you remember being interviewed by a newspaper man from the Montgomery Advertiser in July or August?

A. Yes, sir.

Q. Did you say in that interview that you knew Gallagher had been in the habit of bringing back men, and didn't you explain how they came out there and how much they were indebted to the company and how much it cost to get them there and that they had been abandoned, leaving their contract and Gallagher was justified in bringing them back?

A. No, sir.

647 Q. Did you see the interview with you in the paper?

A. Yes, sir.

Q. Did you retract it?

A. I did not have anything to do with it one way or the other.

Q. You did not attempt to retract it?

A. No, sir.

Q. You saw what purported to be your interview?

A. Yes, sir.

Q. And took no steps to retract it?

A. No, sir.

Q. Don't you know, as a matter of fact—didn't you know then, that it was Bob's business to bring these men back?

A. No, sir.

Q. And don't you know that he had occasion to and didn't you say in that interview that when it was necessary that Bob would crawl all over the men?

A. No, sir; I did not say any such thing.

Q. Did you refer to the Mihaley incident about the attack on this boy up near Paul's?

A. No, sir.

Q. Did you know of it at the time?

A. No, sir.

Q. Is your compensation, or is your support and your living at Lockhart dependent upon this company and your relations with the company?

A. I work for the company at a salary and I suppose you might say it is dependent upon them.

Q. Are you on the bond of Gallagher, Harlan and these parties?

A. Yes, sir.

648 Re-Direct Examination.

Q. Is your financial condition such as to make you dependent upon the Jackson Lumber Company?

A. No, sir; I am not dependent upon anybody.

Q. Your financial condition is such as to make you independent of them, is it not?

A. Yes, sir.

Q. How much are you worth?

A. I can hardly say what I am worth. I am not worth a great deal. I have an income independent of my practice of probably one hundred and fifty dollars per month.

Q. From the Jackson Lumber Company?

A. Independent of my practice.

Q. Are you worth anything outside of that?

A. You do not understand my answer. I have a monthly income of one hundred and fifty dollars outside of my practice.

Q. Real estate, principally?

A. Yes, sir.

Re-Cross Examination.

Q. Do you own some property in Florala?

A. Yes, sir.

Q. Who is your agent looking out for it, for the rents?

A. A man by the name of McGill, is my collector.

Q. Do you know a man by the name of Hughes?

A. Yes, sir.

Q. Do you have business relations with him?

A. Yes, sir.

It is admitted by the Government that the overt acts charged against the defendants here were made known to the United States Commissioner at this place on the twenty-third day of July, and that warrants were issued for the arrest of the defendants on that day.

Thereupon the defendants, in order to maintain the issues in their behalf, called as a witness Miss A. C. CHIPLEY, who having been duly sworn. testified as follows:

Direct Examination.

Q. Did you report stenographically the testimony of Trulich Mihaley at the examination before the United States Court Commissioner some time in July of this year in the investigation of the case in which the defendants here or some of them were charged with conspiracy to hold, arrest and return certain persons into a condition of peonage?

A. Yes, sir.

Q. You reported that testimony?

A. Yes, sir.

Q. Have you your original notes with you?

A. I have parts of them.

Q. Can you state whether during that examination this question was propounded to Mihaley: "Do you stay there because you are afraid to leave? Do you have free agency or are you compelled to stay?"

A. Throught the interpreter.

Q. Did he or not answer: "No, I stay there not because I am afraid to leave, but simply stay there because I
650 have no money to go away with. I made up my mind to work out what was coming to the company and then leave?"

A. That is correct.

Q. Did you report the testimony of John Smith?

A. I did.

Q. Have you the original notes of his testimony?

A. I have.

Q. Will you state whether or not this question was propounded to the witness John Smith on that trial: "Did you hear any conversation between him and Gallagher, referring to the Bulgarian?"

A. Yes, sir.

Q. That was asked, was it?

A. Yes, sir.

Q. What was the answer?

A. "No."

Q. Did you reduce that testimony—you transcribed it?

A. Yes, sir.

Q. Is that transcript a true copy of your notes (handing to witness the transcript)?

A. I think so. I looked them over the other day and found one little mistake in the Mihaley testimony. I had the word escape, but he had the word skip.

Q. How was this testimony taken—how was it given by Mihaley on the trial?

A. Throught an interpreter.

D. Do you know whether much difficulty was experienced at the time in getting the interpreter to understand?

A. The same question occurs on both the direct and cross examination, and I think everybody remembers it

651 as I have it.

Q. What?

A. It occurs on both the direct and cross examination.

Q. Now turn to where Mihaley was asked that question and let us have it?

A. "Do you stay there because you are afraid to leave? Do you have free agency or are you compelled to stay there?"

Q. What was the answer?

A. "No, I stay there not because I am afraid to leave, but simply stay there because had no money to go away with. I made up my mind to work out what was coming to the company and then leave."

Q. Now look at the other part of the direct examination by Mr. Sheppard and find this question: "Did they invite you to get into the buggy with them to carry you back?"

A. I have the place; read the answer?

A. [Q.] If you please.

A. "They compelled me to go in the buggy and sit down."

Q. Now, the next question: "Was anything done to you when you got back or not?"

A. "They took me back to the mill and once or twice gave me a lick with the whip—only two licks with the whip."

Q. Now the next question: "Were any threats made about if you left again what they would do to you?"

A. "The same Hungairian that was with them stated to me that they said to tell me that if he ever attempted to escape again that they would shoot me down."

Q. Now turn on to the last question before the cross examination by Mr. Loftin: "At the time or after the time Mr. Harlan told you that if you left again you would be shot or brought back, did you believe that?" Read the answer.

A. "He believed it, that if he escaped again they would kill him; that he was in the woods and nobody would know of it but God alone." 652

Q. Now turn to the cross examination by Mr. Loftin. See if you have this question: "Was Gallagher present when Harlan told you after you got back to camp that if you tried to escape again that they would kill or shoot you?"

A. "Yes, all three right together."

Q. "Did you believe that?"

A. "Yes, sir; he said he believed it."

Q. Read the next.

A. "Q. Why did you stay there?"

A. "Stayed there because have no money and waiting for some money to come from Pennsylvania. Can't go to the post-office, afraid to go to Lockhart after mail, afraid if he goes there for his mail they will think he is traying to escape—trying to skip, so he decided to stay there."

Q. Now the next.

A. "Q. When Mr. Gallagher took you into the buggy, did you go back to camp of your own free will?"

A. "They took hold of me by the hands and drew a revolver on me and I had to go."

Q. "That was when they overtook you in the buggy?"

A. "Yes, sir."

Thereupon the defendants, in order to maintain the issues in their behalf, called as a witness H. WOLFE, who having been duly sworn, testified as follows:

653 Direct Examination.

Q. Your name is Wolfe?
A. Yes, sir.
Q. Do you hold any official position?
A. Chief Deputy United States Marshal.
Q. Do you know whether any of the witnesses in this case have been confined together since the termination of the preliminary hearing in the summer?
A. Witnesses for the Government at any particular time?
Q. At any time since the preliminary hearing?
A. As near as I remember just at the present moment there was six or seven of these witnesses committed to jail early in August.
Q. Do you know when the first examination occurred here?
A. It was, as I remember, about the thirtieth of July.
Q. About the twenty-eighth of July?
A. No, I think it was close to the end of July.
Q. Have they been in jail since the preliminary hearing?
A. Since the early part of August.
Q. Ever since the second or third day of August?
A. Yes, sir.
Q. Which ones of these witnesses have been confined together?
A. They are not now in jail and have not been for some time.
Q. How long did they remain in jail?
A. About nearly four months.
Q. In jail together?
A. Yes, sir.
Q. Do you know the names of those confined together?
A. I can give some of them.
A. [Q.] Give me the names of some of them?
654 A. William Keller, John Smith, Trulich Mihaley, Albert Danish, or something like that, Louis Abraham.
Q. Anybody else? Buckley?
A. No.
Q. Maginnis?
A. No.
Q. Charley Haas?

A. No.

Q. These are all that you can think of?

A. All I can think of now.

Q. I have William Keller, John Smith, Trulich Mihaley, Albert Danish and Louis Abraham?

A. Then Jordsman.

Q. The man known as the Bulgarian?

A. Yes, sir; but he was not in as long as the rest.

Q. Don't you know that Maginnis was in there, Mr. Wolfe?

A. No, sir; Maginnis was not as a Government witness. I have no record of Maginnis being confined as a Government witness.

Cross-Examination.

Q. Now, Mr. Wolfe, they went in some time in August?

A. That is my recollection.

Q. Do you know of any of them being taken out of jail and kept out for a considerable length of time on account of sickness?

A. Trulich Mihaley was in the hospital for some time.

Q. How long was he confined in the hospital, six weeks or two months?

A. Four to six weeks.

Q. Do you know what his sickness was?

A. Typhoid fever.

655 Q. Do you know whether Jordsman was in here all this time or not?

A. No, sir; he was not in there all the time—only in there thirty-eight days.

Q. They went in on the fourth or fifth of August and came out when, about the commencement of court?

A. Yes, sir; been released two weeks or three weeks.

Re-Direct Examination.

Q. That is since the trial of the other defendants in another case, part of them, Mr. Harlan and others?

A. I could not say for certain whether it was before the trial began or whether it was since the trial began; I could not say.

Q. It was not before the opening of court here?

A. I do not think so; I think it was perhaps about that time.

Thereupon the defendants called as a witness one EMIL LESSER, who having been duly sworn in their behalf, testified as follows:

Direct Examination.

Q. What is your name?

A. Emil Lesser.

Q. What is your age?

A. Fifty-six years.

656 Q. Where do you reside?

A. Birmingham, Alabama.

Q. What is your business?

A. I am in different businesses. I am editor of the Birmingham Courier, a newspaper there. You want me to say what other businesses?

Q. Yes, sir?

A. I am president and owner of the Alabama Paper Company, one of the largest paper houses in the South, and owner of the Metropolitan Hotel in Birmingham, a large hotel, I have some farms and am interested in other businesses.

Q. What is your nationality?

A. I am a German.

Q. How long have you been in this country?

A. I live in Birmingham twenty-six years and came here about a year before—twenty-seven years.

Q. Do you hold any positions with any organizations—any official positions?

A. I am president of a number of organizations; yes, sir.

Q. What are they; name some of them?

A. You mean fraternal organizations?

Q. Any you are connected with; any organization for the protection of foreign emigrants?

A. I am president of the German Emigration Society of the State of Alabama.

Q. What is the object of that society?

A. It is to protect German emigrants against imposition, in case of distress, destitute, sickness, etc.

Q. Did you ever have occasion to visit the log camps, mill and operations of the Jackson Lumber Company at Lockhart, Alabama, and about there?

657 A. Yes, sir.

Q. Explain fully and in detail what led to that trip and what you did?

A. During the summer of this year newspaper articles reached us in which the claim was made that a number of German emigrants had come to Lockhart and were employed by the Jackson Lumber Company and were held in a state of peonage there, had skipped away and came to the German Consul in Pensacola, made complaints with him on account of their treatment and asked for help. Thereupon a meeting of the board of directors of the German Emigration Society was called, a letter was immediately sent by the secretary of that society, Lem Morris, in Birmingham, to the German Consul of this city. No reply being received at the time before the board adjourned, I was directed to go to Pensacola, confer in person with the Consul, to tell the consul either to have him or myself employ local counsel in case we found that Germans had been imposed upon or held in peonage; in other words, to assist the government in prosecuting those cases and if necessary continue on down to Lockhart and make a personal investigation there myself. I came here; when I came here Mr. Rolf, the consul here, informed me that he answered that letter and the letter was crossed me—

Q. You conferred with Mr. Rolf, did you?

A. I asked him whether those newspaper articles were true, if the Germans had come to him and made that kind of complaint—

But counsel for the Government did then and there object to witness relating what was said in this conversation, which objection was then and there sustained.

Q. Now, after that conference with Mr. Rolf, what did you do?

A. I went to Lockhart.

658 Q. Did you go directly to Lockhart or did you come here in the court room?

A. Mr. Rolf brought me up to the court room first and introduced me to the gentlemen here at the commissioner's court and Mr. Sheppard, the district attorney. I do not know whether he did introduce me or I introduced myself, or Mr. Marsh, but I was introduced by his agency here and I was invited to come into the court room and listen to the testimony which was at that time given in the preliminary hearing.

Q. Did you go in?

A. I did. I found that here was no Germans amongst the witnesses then here—no German emigrants, and I was sent for that particular purpose to see them, so I did not stay. I was here one day..

Q. Where did you go from here?

A. I went to Florala, I think that is as far as I went that night and stayed in the hotel there.

Q. You left here in the afternoon?

A. I cannot remember exactly the time, it must be something like five or six o'clock the train leaves, when I went to the depot and bought a ticket from here to Florala.

Q. And where did you go from there?

A. The next morning I found that there was no train going conveniently and I hired a conveyance in the livery stable and went from there to Lockhart.

Q. Well, what time did you get to Lockhart?

A. Early in the morning. Perhaps half past seven or eight o'clock, something like that.

Q. With whom did you first confer when you first got there?

A. I went to the office of the Jackson Lumber Company and I found one gentleman in the office by the name of Mr. Allen. I introduced myself to him and he told me
659 he had just come from Montgomery a few days
ago, so he says he did not have time to go with me, but he would try and find some one to take me out and show me the location of the camps. Well, he taken quite awhile, and finally he found a doctor Trammel, I believe is his name, and a tall gentleman and this doctor promised to take me out if I had time enough to wait, as he had to make some professional calls. I waited three-quarters of an hour in the adjoining room and waited until he came and taken me out.

Q. What did you do when you got out there?

A. I entered into an investigation, going from man to man. I seen in the camp, the different parties at work at different places and different kinds of work. I especially asked for the Germans. I spoke to thirty-three who were able to speak German language—not all Germans, but some from other sections of Europe, Russia, Bulgaria, Austria, etc. They spoke some German. I spoke to them; I spoke with some Americans there. I spoke with some colored fellows there; in all I spoke to nearly one hundred men.

Q. Was this conversation and investigation carried on on the presence of the bosses?

A. During the time of this investigation there was no bosses there except during the dinner hours when they all came—all the help came to the cars—they got dinner cars there and the bosses were all there, then, of course. We talked all around, but at that time I really made no—asked no questions concerning the object of my visit, knowing that the bosses were there.

Q. You did not care to conduct your investigation while they were under the surveillance of the bosses?

A. No, sir.

660 Q. Or in their presence. Now, then your investigation was conducted outside and away from the bosses. You talked to the men away from their bosses?

A. Yes, sir.

Q. What was the nature of the investigation; explain to the jury just the extent of it and what occurred?

A. I asked each man probably three questions. One was are you held here against your will? Can you go and leave here when you wish? Secondly, have you received any ill treatment as far as beating is concerned, and third, were you present and do you know of your own knowledge of any beating which has been administered by the bosses?

Q. What was their answer to these questions?

A. There was no one who said they were held against their will. Some told me that they were already gone to Lockhart and gone to Florala, especially on Saturday nights. They all said they could go if they wished to. They told me there has been some beating done there by men who had done some stealing. Stealing was done from the people. I spoke to one German who told me that every stitch of clothing he had was stolen except what he had on his body. The beating was done by the men from whom the stuff was stolen and laborers combined and one of them told me that he was sorry that he did not kill the scoundrel who stole the stuff from him.

Q. You say this beating was done by the laborers themselves?

A. Those two particular instances which they mentioned.

Q. Now, did you talk to the Hungarians?

A. Yes, sir.

Q. Did you talk to the Germans?

A. Yes, sir.

661 Q. Did you talk to the Americans?

A. Yes, sir.

Q. Did you talk to the Hungarians, you said?

A. Providing they were able to speak the language.

Q. Some of them were able to speak it?

A. Yes, sir; thirty-three that spoke German.

Q. And at that time after talking to one hundred men and thirty-three foreigners, you were unable to find any men who gave you any information to the effect that he was detained against his will?

A. Yes, sir.

Q. You went among the men freely?

A. Yes, sir.

Q. Did anybody, any of the bosses, so far as you know know that you were going to make a visit to Florala?

A. I could not tell you. I do not think so, because there was surprise that I was there. This doctor who brought me out had a conversation with one man—don't know who he was, and he must have given the orders that I can speak to the men because I came to one place where there was a little house and the man in charge of it left me speaking to them. I asked one of the fellows who the man was and he told me he was the boss. The fellow left me when I spoke to him.

Q. Did you see Mr. Harlan at all while you were out there?

A. No, I met Mr. Harlan the first time I came here last time as a witness.

Q. That was the first time you ever saw him?

A. Yes, sir.

Q. You never saw him at all while you were up there?

A. No, sir.

662 Q. Do you know whether you saw Mr. Gallagher while you were out there?

A. During the time I was here and came up here with the consul he was shown to me and I do not know, but I believe I was introduced to him. I am not positive, but I know I seen him in here when the preliminary trial was here. He was not there when I came there—he was here.

Q. You went there for the purpose of making that investigation and I suppose you more or less observed the conduct of the men while you were there. Did you observe any disposition upon the part of any person to prevent you from talking freely to the men or them talking to you?

A. No, sir; nothing of that kind.

Q. You say you had no communication with any of the foremen or bosses there before you went there?

A. No, sir; except this, I say I might have been introduced to Mr. Gallagher here.

Q. You had no interest in the company in any way?

A. No, sir.

Q. You went there simply in the discharge of the duty as representative of the German organization?

A. Yes, sir; and at the suggestion of the German consul here.

(Witnesses Buckley, Squarehead and Haas here called into court for identification by witness.)

Q. Did you ever see those boys before?

A. Yes, sir.

Q. You recognize them, do you?

A. Yes, sir.

Q. Can you indicate whether either one of them was spokesman at the time?

A. The last boy down there; his name is Haas, I believe.

663 Q. Was the other boy next to him present?

A. Yes, sir; and two more were present.

Q. This boy Haas the one pointed out as being the spokesman, did you have any conversation with him?

A. I did.

Q. Where?

A. On the eastern side of the place where the dining cars were located and right in front of a stable. Those five boys they brought horses—I think they were horses or mules out and during my conversation with this one all of them mounted the animals and that is the place where I spoke to them. It is in the neighborhood of the blacksmith shop and stable and shack where they kept foodstuffs.

Q. The second black-eyed boy was there?

A. Those three and two more.

Q. All were present?

A. Yes, sir.

Q. Were there any bosses there?

A. Absolutely no one except those five boys and myself.

Q. What conversation did you carry on with them?

A. Well, I asked those boys the same questions as I have asked the others. This one boy here, that spokesman, speaks German. He is a Hebrew boy and that is one reason I was interested in him. There was at least three Hebrew boys and I asked him whether he had any complaint and he told me that he had no complaint then, but have had some complaint. Well, I asked him the nature of it and he told me when he first came there they were put on very hard works sawing logs and some other kind of work which they could not do

and they were in charge of a foreman who did not treat them right. He did not know the nature of the work and could not understand them. He was not an American. He was an Italian by the name of Angelo. I asked him
664 whether he whipped him and they told me no, but he hollowed at them so much they made a mistake in their work, that they were scared to death. He says he did himself in behalf of the boys asked the foreman, I think he asked Mr. Gallagher, to put them on some other work which they had and he made teamsters out of them and as soon as they became teamsters he says the company was better satisfied with them as they could turn around quicker than green men and they had no complaint to make since that time any more.

Q. Did he say anything about undertaking to hold him there against his will?

A. No, sir. I asked all the boys the same question and they said no. I could not see this fellow Angelo and they told me where I could find him, pointing to the direction of the railroad on the other side of the same work going on there which I could not see from that place and they pointed in that direction.

Q. So they said Angelo was not there at that time, but he was altogether somewhere else?

A. They showed me which direction I could find him.

Q. Now, did you see anybody trying to chase either one of the boys away from there and sending him about other duties at the time you were conferring with them?

A. There was no one present except those five boys when I spoke to them.

Q. How long were you in making that investigation?

A. I came there in the morning as I have stated. It does not take long to go from Lockhart to the camps and I stayed there until late in the evening when I came back to Lockhart. It is about a twenty minutes' ride to Florala and I think it was nearly five o'clock.

665 Q. Did you come back here to the court room?

A. No, sir.

Q. Why?

A. Well, as I have told you I was sent there for one particular purpose—to see whether there was any Germans mistreated or held in peonage and for the protection of them since I found no solitary case the object for which I was sent was carried out and I went home. My time was so limited I could not possibly spare any more time.

Q. Do know of your own knowledge how the men are procured by the labor agencies in New York for sending South under these contracts?

A. Yes, sir.

Q. How?

A. They are advertised in the newspapers, they have paid agents or paid employes at the entrance at Ellis Island where the emigrants come here and when they are finally discharged by the government and come over to New York they keep people there with hand bills in different languages advising emigrants to go to that and that office. I have seen that done myself. That is one of the means. I do not say that is the only way they procure them, but this is one of the ways. If you want work we will give you work if you call at number sixteen Broadway or whatever it may be at that agency. Now, I have seen these hand-bills in the German language, in the Slavanic language and I see it in a heap of tongues.

Q. Do you know whether or not when the police have collected vagrants and others that they are frequently gotten out of town by means of these agencies?

A. I had a case on yesterday morning when ten men came to Birmingham just before I left—

666 But counsel for the Government did then and there object to the witness stating about the ten men, which objection was then and there sustained by the Court.

A. They go to the agents and that agent gets a dollar and a half and sometimes two dollars, makes even false statements.

But the counsel for the Government did then and there object to the said answer, which objection was sustained and said answer stricken out.

Cross Examination.

Q. Doctor, you stated that you were president of the Immigration Society of Alabama?

A. Yes, sir.

Q. How is that society supported; how is it kept up?

A. By regular dues being paid by the members and by subscription.

Q. By voluntary subscriptions?

A. Yes, sir.

Q. Who are the voluntary subscribers, or men who make the subscriptions?

A. Business men, merchants, attorneys, artists are all the same.

Q. Is not the object and purpose of the immigration society chiefly to procure foreign emigration that comes into New York and locate them in Alabama?

A. No, sir; in the German Immigration Society they do not use any such step at all; simply a society for the protection and a beneficial society exclusively.

Q. Then it is a sort of fraternal society?

A. No, sir; it is not even a fraternal society.

667 Q. Don't you know of your own knowledge that the railroad companies are large contributors to this society?

A. Has never received a penny from any railway company, nor have they ever applied to any railway company for a penny. They do not accept any.

Q. Just answer my question. Didn't you state that the railroads were interested in bringing out these emigrants and locating them in Alabama?

A. I did, but not the German Emigration Society.

Q. How many Immigration Societies are you connected with?

A. There is a society which has also a sort of immigration and commercial object extended all over the South—it is different alaogether—formed by immigration people.

Q. Are you connected with that?

A. Yes, sir. I was last week created a member of a committee. Up to last week I—

Q. What sort of a commission did you have from the Governor of Alabama or anybody else connected with the administration in Alabama when you were making this investigation at Lockhart?

A. The Alabama Press Association, the newspapers at their annual convention in Gadsden, the Governor was there at the time those things appeared in the papers. I came late to that convention—I ought to have been there on one evening and I came there the next evening. Being asked why I came late I told them on account of my German Immigration Society which wanted me to do so and so I would have to go to Pensacola to see the consul, and they asked me to let them know the result at once.

Q. Now, is it not a matter of fact, that these different associations, this immigration society you belong to and the other associations are interested in locating emigrants in the state of Alabama and didn't you know at the time 668 that you came down here that these reports that were coming out from Lockhart were damaging to the interests of these companies or societies?

A. Our society has absolutely nothing to do.

Q. How many societies were you connected with last July and August?

A. I was and am today president of the Hebrew United Charities in my district.

Q. You were such when you were down here last July?

A. Yes, sir.

Q. Now, you say you came down here and was present in court?

A. Yes, sir.

Q. How long did you remain here?

A. Perhaps two hours.

Q. Were you not making excerpts or memorandums of the testimony of the witnesses being sworn here at the time?

A. Yes, sir.

Q. Did you not come down here for the purpose of volunteering your assistance to the Government in the prosecution if any offense might be committed?

A. I did, provided there were any Germans included.

Q. Did you inquire, and if so, from whom did you inquire whether there were any Germans here to be witnesses in that case that day?

Q. Right here in the court from the gentlemen around here.

Q. The gentlemen sitting back of the table there, did you make any inquiry from them?

A. I think either from Mr. Marsh or from you.

Q. Did you see William Keller here?

A. I heard William Keller's testimony.

669 Q. Did you hear him state whether he was of German descent or not and how long he had been in this country and whether he was of German descent or not?

A. Yes, sir; he was here since he was a little boy when he came here.

Q. You heard his testimony, then?

A. Yes, sir.

Q. You were not satisfied with his testimony as to whether he was a German or what he was. Now you left here and went up there. Did you see or hear John Smith's testimony that day?

A. I heard three witnesses.

Q. Now, you are only interested in Germans?

A. Yes, sir; sent for that purpose.

Q. Why did you go around and interview colored men and around in general, anybody that you could talk to; why didn't you seek out the Germans then?

A. I tried to find people who spoke the German language and being there and speaking to the people and having read the newspaper reports I asked everybody I could see there, white and black.

Q. You had the same opportunity before you left the court of hearing what the witnesses would say, didn't you?

A. Here only had chance to see those witnesses who were here in court. There was none of the people for whose protection I was sent here was my reason for leaving.

Q. You saw no Germans here?

A. No, sir.

Q. And when you went up there you did not seek out and look for Germans, but you went around and sought the colored people?

A. No, I picked out the Germans.

Q. Didn't you see one hundred men?

670 A. I did, thirty-three Germans among them.

Q. Now could you not have ascertained from the sworn testimony about the facts from the witnesses who were not Germans as well as by going up there?

A. No, sir; my instructions were to go to the place where the claim was made that the conditions existed.

Q. Was it not from the fact, doctor, that it was to the interest of your society your immigration association, that if possible that these reports which had been circulated in the papers should be contradicted?

A. Quite to the contrary.

Q. How long was it before you published a report or gave a certificate of your visit there?

A. A few days.

Q. It was after you had come back here to court—after you had come back to town?

A. No.

Q. Did you come back to Pensacola before you went home?

A. Yes, sir.

Q. Did you know that the investigation was still under way when you got back?

A. I do not remember.

Q. You did not come up to inquire or find out what was going on here?

A. No, sir.

Q. What was the nature of your report when you got back?

A. My report was that I had spent—had spoken to nearly one hundred men, thirty-three Germans or thirty-three speaking the German language; that neither one of the fellows there claimed that he was held against their will; that they could go whenever they wished to; that neither one complained of ill treatment; that they knew stealing was going on and two parties stole some from the Germans themselves and had received a whipping from them; that a number of them complained as being unused to hard work; that the drinking water was to a great many of them unsatisfactory; that they was suffering from the intense heat of the climate; that their meals and nourishment, etc., was good and better than I found it anywhere else in camps of that kind; that I found some sick men there, but they told me they was under the treatment of a doctor; that some of them told me they wanted to get away as quick as they could get money enough; one wanted to go to New Orleans and one wanted to go to San Francisco, and that, therefore, I found some causes of complaint for the reasons stated, but absolutely no sign of peonage; if there has been any peonage then every trace of it was removed before I came to that camp; that was about the substance of it. 671

Q. Did you state how long you had been in that camp?

A. I did; I gave the time.

Q. Just a few hours?

A. One day.

Q. Now, as a matter of fact, you had not been in the camp one day?

A. From morning until evening.

Q. About how long were you around about the office?

A. Three-quarters of an hour.

Q. What time of day did you leave Lockhart to go out there?

A. Early in the morning.

Q. Was Dr. Trammell down here in court?

A. No, I met him here.

Q. I am talking about the first trip you went out there?

A. I met the man down in the camp.

672 Q. You went with him over to the camp—that is he drove out there with you and you did not know who the man was?

A. On the way going I think three and a half miles from Lockhart—the main camp where the lumber mill is—to one camp where the men is employed and on the way there he told me who he was and that he was working for the company.

Q. That he was the doctor working for the company?

A. Yes, sir.

Q. Do you know a man by the name of Ross in New York?

A. No, sir.

Q. Do you know a man by the name of Ross C. Smith?

A. Yes, sir.

Q. A man by the name of Ewing?

A. Mr. Ewing is in New York.

Q. Are they not also co-operating with you in this immigration business?

A. No, sir. They are with the Alabama and Southern Immigration and Commercial Association which extends all over the Southern States.

Q. You are connected with them; you correspond with them in connection with your immigration society?

A. No, sir. Last week they called me to Mr. Smith's office in order to form an independent committee to frame a bill for the Alabama legislature.

Q. That is the time you met them?

A. Last week. I had no connection with that society at all before.

Q. Now, when you came down here to see the consul he brought you up here to hear the testimony in that case didn't he?

673 A. Yes, sir; wanted to find out whether they had any Germans here.

Q. Then you were only interested in Germans?

A. Yes, sir.

Q. Notwithstanding the fact you had a connection with the Jewish Society, you were only looking after the welfare of the Germans?

A. That was the purpose I was sent for and that was the reason I take particular pains to speak to this boy to see if I could do anything for him on account of the Jewish Society. That society is divided into different districts and they have got a president here.

Q. Now, you do not deny that you were given every opportunity by the Court Commissioner to consult with the witnesses here and as much opportunity as was given you at the camps?

A. Certainly not as far as the Germans is concerned.

Q. You did not confine—what did you do with that whitewash report when you made it out?

But the counsel for defendants did then and there object to the words whitewash embodied in the foregoing question upon the ground that no evidence of such a report being made, but the Court did then and there overrule such objection, to which ruling of the Court the defendants did then and there except.

Q. What did you do with that report?

A. I sent a copy of it to the German Consul in Atlanta.

Q. Didn't you publish it?

A. Another one to the Governor of the State of Alabama and another one ot the secretary of the German Immigration Society.

Q. How many? Did you publish it in your paper?

A. Yes, sir.

Q. Did that promote the sale of your paper unusually—an unusual number of copies of your paper?

674 A. That business is attended to in my office. I could not tell you.

Q. You do not know how many papers were sent to the Jackson Lumber Company containing that report?

A. I do not know.

Q. Don't you know that copies were mailed and sent to that company?

A. Undoubtedly. I sent one marked copy myself. I sent one to this office here.

Q. I want to ask you about another thing. Did you see and observe any Hungarians in the court room when you were here that were witnesses?

A. I cannot remember. I do not know whether there were any Hungarians or not. I believe there was one here.

(Witness Mihaley was here called into court for identification by the witness on the stand.)

Q. Did you have a conversation with the commissioner that morning about the time Trulich Mihaley was under examination?

A. Yes, sir..

Q. Did you get from him generally the nature of the charges—what was being investigated or what would be investigated that day?

A. He told me that these people ran away—

Q. Had he not in a conversation called your particular attention to the fact of the men being captured at Laurel Hill by Gallagher and others?

A. If he did I do not remember that. They all claimed that they were captured and sent back and mistreated—something like that.

Q. You did not hear anything at all that day—nobody was pointed out to you as being the man who had been captured at Laurel Hill and carried back?

675 Q. Were you interviewed by anybody shortly after your report was made and after you published in the papers that you had been there and found what you considered no peonage?

A. Yes, sir.

Q. Did you issue a certificate or note to somebody—do you know who that party was that you had that interview with?

A. Yes, sir; she introduced herself to me and promised me that she would furnish me evidence in writing to prove that at Laurel Hill one of the men was captured and beaten. Upon her promise I gave her a letter. She has never fulfilled her promise.

Q. You did give her a letter?

A. Yes, sir.

Q. Would you remember the contents of that letter if I were to read it to you?

A. Yes, sir.

(Trulich Mihaley here brought into Court again).

Q. Now, look at this man and see if you did not see him sitting at the end of the table and was taking observations of the witnesses and testimony?

A. No, sir.

Q. And is he not the man that Mr. Marsh pointed out to you as the man who complained that he was arrested at Laurel Hill and carried back against his consent?

A. No, sir; it was a taller man than him. It might have been one of the men there, but I do not remember of having seen this man before.

Q. Now, examine that article and see if that is a purport of what you gave the lady?

A.. Yes, sir; I read that this morning.

Q. Will you read it?

A. Yes, sir.

A. I think one man was pointed out to me and—

676 Q. What kind of a looking man was he?

A. A tall man, heavy set fellow. The fellow whom I spoke to—that fellow says he was on his way back on his own hook. I do not know whether he had turned back, this fellow that you are referring to now.

Q. He had gotten lost?

A. That is what the interpreter told me he stated to him.

Q. You heard the man's testimony himself; did you stay long enough to hear that?

A. No, sir.

Q. Do you know—was this man sitting in the court room among the lawyers and witnesses in the case?

A. I think he was shown to me in the commissioner's office—not in here.

Q. You understood, or did you, at the time he was shown to you the nature of his complaint, that he had been captured by Gallagher and carried back against his will?

A. No, sir; I left before that case came up.

Q. What I am inquiring about is didn't you talk with Mr. Marsh about that—didn't he tell you that that was this fellow's complaint?

Q. He did not point out any particular case. He spoke in general terms about all of them.

Q. Now can you give me the names or did you give the names in your report of any of the parties that you consulted up there?

A. Yes sir; I think I mentioned eleven out of the thirty-three.

Q. You gave their names?

A. Yes, sir.

Q. Did you issue that?

677 A. Certainly.

Q. Now you have heard the testimony—you have read the testimony since that time?

A. No, sir. I have had only very little notices and I have written to Miss Quackenbosh for the evidence and have not received it.

Q. You gave that statement?

A. Yes, sir; in good faith.

Q. Upon the authority that if such a man had been arrested and carried back then you would modify your report, and statement and would say that there was peonage there?

A. Provided it was shown that it was with the consent of the Jackson Lumber Company.

Q. You did not state that in your letter?

A. Yes, sir.

Q. Now, you have heard since and know now the testimony and what was proved at the last trial, don't you?

A. No; I do not know. Evidence has not been established before me. I have no idea as to that.

Q. You want such testimony as you were able to get up there in camp from such people as were pointed out to you?

A. I am a gentleman and not a scoundrel and I believe—

Q. What I want to get at if you were here to get a fair investigation, if that was your object, why didn't
678 you stay here and hear the sworn testimony of the witnesses in Court?

A. I have told you there was no Germans amongst them. You do not know how busy I was and I tried to go and get away from my office to do you a favor.

Q. Why did you go up there and consult men in generally?

A. I did. I was there with my investigation with the Germans and was through with them and was waiting until this doctor came back to take me back to camp.

Q. When you came back you never came here to Court?

A. No, sir.

Q. You never approached the District Attorney or anybody else to know what the testimony was?

A. No, sir.

Q. You rushed back to Alabama and without knowing what had had been done in these cases you published to the world what you understood?

A. That there was no Germans or evidence of any peonage at the camp. I did not say there was none there before, but if so, every trace was removed. I stand by my report to this minute, and every gentleman would, too.

Q. You are interested in the human race—that is one of the businesses of your society and your mission was to see if any Germans had been imposed upon?

A. Yes, sir.

Q. How long have you been in Alabama?

A. Twenty-six years.

Q. Are you pretty familiar with the laws of the State of Alabama?

A. I think I am.

Q. Examine that and see if you are acquainted with that statute?

A, Yes, sir.

Q. You are familiar with that law?

679 A. I am. Let me modify. I am since day before yesterday.

Q. Was that the first time you ever saw it?

A. Counsel showed it to me.

Q. You are a prominent German looking after the interests of your people?

A. Yes, sir.

Q. Seeing that they are not imposed upon and are necessarily acquainted with the statutes of your State, whether your laws are discriminating or not, and you never saw that before day before yesterday?

A. I had no occasion to see it.

Q. You have never taken such a step as the leader of your people to have that law abolished?

A. No, sir.

Q. Now where did you first meet Mr. Marsh that morning?

A. I think in his office.

Q. Were any witnesses in there?

A. Well, during the time I was there they was going and coming in and out and I do not know who was witnesses and who were not.

Q. Don't you remember this incident that in talking to you about the peonage up there that Mr. Marsh pointed out to you this Hungarian and Mihaley?

A. I spoke to another taller man who was also complaining This man might have been there.

Q. Didn't Mr. Marsh, the commissioner, at that time at your request, didn't he tell you what the circumstances were about this man's complaint, that he had been arrested and whipped near Laurel Hill and had been carried back against his will?

A. He did not go into any explanation of that kind. He told me he might have pointed that man out—there

680 was so many there it is impossible for me to remember. I asked him if there was any Germans amongst them and he told me no.

Q. Didn't you take a memorandum of the testimony of the witnesses you did hear testify?

A. Yes, sir.

Q. Why didn't you publish some of that in your report?

A. I did.

Q. Of these witnesses?

A. Yes, sir; in the first newspaper I published I remember there was a fellow by the name of Lambert; I gave his testimony.

Q. What was Lambert—a German?

A No.

Q. You are certain he was not of German descent? Didn't Keller say in his statement that he was of German descent?

A. Yes, sir; but he says he came to America when he was a boy six years old.

Q. How long did you stay in the court room that day?

A. Altogether I do not know—about two or three hours.

Q. How many witnesses did you hear examined?

A. Four altogether.

Q. Have you got any memorandum that you made at that time with you?

A. No, sir; I had it with me the last time, but not being asked—

Q. Now, you recollect that William Keller?

A. I remember his being on the stand at that time.

Q. Don't you remember that Trulich Mihaley, the Hungarian, had to be interpreted by the gentleman—did you hear some testimony taken by an interpreter?

681 A. If he did during that time I was not in the court room, and this same fellow you speak of now, if he was examined I must have been out.

Q. Don't you know that he was the second witness called in the examination that morning?

A. No, sir.

Q. Did you not hear any testimony through the interpreter?

A. No, sir. I spoke to one interpreter in the commissioner's court room in here. I think it was Mr. Friedman. He asked one of the men when I was in the court room some questions, but I do not remember any more what the defendant was.

Q. You were introduced to the gentleman before you left that morning?

A. Not before I came in here. I was introduced to Mr. Gallagher.

Q. Did you give any intimation or did you suggest to the District Attorney or the commissioner, Mr. Marsh, your purpose and intention of leaving and going to Lockhart that day?

A. No, sir; when I left here I went directly back to the consul's office and he told me that he had no complaint and suggested my going out.

Q. When you introduced yourself and you met Mr. Marsh and the District Attorney didn't you state your object was to hear the testimony?

A. If any Germans—

Q. Didn't you wish to hear the testimony of the case and if necessary to employ additional counsel?

A. Provided there were Germans mixed up in it.

Q. You did not wish to hear the testimony.

A. You yourself stated there was no Germans—

Q. I am asking you whether you staid to hear the testimony of these witnesses?

A. No, sir.

682 Q. Even though you came here for the express purpose of hearing the testimony in that case?

A. I came to hear the testimony of the German witnesses.

Q. Did you know anything about what the outcome of that examination was before you published that report?

A. Which outcome?

Q. That examination before the commissioner, that part of it?

A. No, sir; I know it now.

Q. But you did not know at the time you published to the world your certificate that you gave about your investigation?

A. I would publish the same report now.

Q. Answer my question, please. Did you know what the result was or what the finding of the commissioner was in the case that you heard a part of in the investigation down here before you published to the world that report?

A. No, sir.

Q. Did you make any attempt to inquire?

A. No, sir.

Q. Hadn't you been to Pensacola subsequent to the time that you heard the testimony before publishing that report?

A. At the time I came back, the next day, was going on and there was no finding reached.

Q. You did not inquire of anybody that was connected with the Court what that testimony was?

A. Since I found there was no Germans I made no further inquiry. I had no object.

Re-Direct Examination.

Q. You were not sent out there to assist in the prosecu-

tion if the facts did not warrant it, were you, and
683 to spend the company's money unless the facts warranted it and justified it?

A. Yes, sir; if there had been any complaining German immigrants I would have employed additional counsel.

Q. Let us deliberate now and understand each other. What I say is did your company authorize you if men were not guilty to assist in a prosecution?

A. No, certainly not.

Q. Did your company authorize you to spend any money in the prosecution of anybody held in peonage outside of Germans?

A. No, sir.

Q. Did you, acting for your company, intending to make a thorough and complete honest investigation, feel called upon to be bound by the ex-parte statements of the witnesses that were down here, or did you feel justified in making an investigation there as well?

A. I did.

Q. You felt you would make a thorough investigation?

A. Yes, sir.

Q. Didn't you know that the testimony taken down there would be reduced to writing and all would be brought out where you could see it afterwards?

A. I did.

Q. You did not come here to whitewash anybody, but came here with the contrary view; what was that contrary view?

A. I do not understand the question.

Q. Just now, Mr. Sheppard, in a colloquy with you intimated that you came here to make a whitewash report?

A. He did not intimate that.

Q. Yes; he made that statement, what did you do with that whitewash report. Did you come here to whitewash anybody?

684 A. I had no occasion to do that, no object. I am above anything of that kind.

Q. You came here with a contrary view, didn't you. You came here with a different view from that?

A. Sir.

Q. You came here with a very different view, didn't you?

A. Yes, sir.

Q. That view was that when you came here there was something in these reports?

A. Yes, sir.

Q. And you intended to verify them if you could?

A. Yes, sir.

Q. And you went there with the intention of supporting it if you could find testimony to bear it out?

A. Yes, sir.

Q. You had no interest in whitewashing anybody?

A. No, sir.

Q. When these witnesses were being examined here did you feel that you were bound by the mere statements of the witnsses or did you feel justified in making a true and correct report of your own to your company?

A. I certainly felt justified in making a personal investigation and report as I ought to upon the finding of my own personal and disinterested investigation.

Q. That society did not undertake to take care of anybody and spend money in the prosecution of anybody except parties holding Germans, does it?

A. No, sir. The society is known all over the country and is doing more good than any similar society down
685 here.

Q. You did not even know any of the foremen or bosses of the Jackson Lumber Company, did you, when you went up there?

A. No, sir.

Q. The first one you ever saw was in Pensacola?

A. Yes, sir.

Q. Are you associated in business with any of the stockholders of the Jackson Lumber Company?

A. No, sir. I never knew the name of the company until I read the charge in the paper.

Re-Cross Examination.

Q. When you went up there to make a report you say you did not confine your investigation to Germans, but you went to see other people—all kinds of people, Americans, Hungarians and others. Did you speak the Hungarian language?

A. No, sir.

Q. Did you procure an interpreter?

A. No, sir; one man there who spoke German by the name of Robert, who spoke some German—

Q. Were you authoried at that time to administer oaths and take testimony?

A. No, sir.

Q. You had no authority to swear the men?

A. I did not swear a man.

Q. Did you know the bosses from anybody else when you went there?

A. I saw some of them during the forenoon. Would not have known the difference because none dressed the same way.

686 Did you meet Mr. Angelo?

A. If I met him I met him during the dinner hour with the others. I think all the bosses were at dinner.

Q. Would you have known whether Angelo was a boss or not or a laborer?

A. If he was dressed like the others I would not.

Q. How many bosses did you meet?

A. I could not tell you that. During the dinner hour when they was all eating there there must have been seven or eight.

Q. Did those bosses come in with the men to the cars and go away with them?

A. No, sir; they came just as you please, come and go.

Q. Did anybody know your business except Dr. Trammel of the company?

A. I do not think so. I do not see how they could have known it.

Q. Where did you leave Dr. Trammel?

A. He left me when we came to the camp, where that blacksmith shop is. I got out of the buggy there and he left me.

Q. What was the subject of conversation between you and Dr. Trammel on the way out?

A. Principally as to the condition of the land there through which we traveled, stating that this land was laying there waste for such a long time. He told me of his farm and said that he would like to get hold of a good German.

Q. The subject of your trip was not suggested?

A. Yes, sir.

Q. That was talked about too, also?

A. Yes, sir; I spoke about it. I asked him as to the condition and attention of the sick men and asked him whether the company had a hospital—

687 Q. You were talking with the company's doctor at that time. Did you put him under oath?

A. No, sir. I asked him whether the company had a hospital. I don't think I asked him any other question. I asked him whether he had any sick men or not.

Q. Now, tell me as a fact, didn't the doctor tell you about these reports that had got out—

A. Never spoke of that.

Q. Never suggested that at all?

A. No, sir; we spoke about different things altogether.

Q. About lands and about raising crops and about farming?

A. Yes, sir.

Q. Did you in your report that you published publish anything of the investigation or did you state in that report that there was an investigation by the Court at Pensacola at the same time you made this investigation?

A. I think I did. I have not got a copy of that report.

Q. You think you did?

A. Yes, sir; I know I stated it.

Q. Did you say that you had left the investigation in progress and went up there to find out the truth for yourself?

A. I said in my report since I found in Court no Germans to make any such complaints, not receiving any such statements from any Germans, I went there myself.

Q. Did you see a Hebrew in Court at the time, a witness against these parties?

A. No, sir.

Q. And you knew at the time that you were here that you belonged to a Jewish society?

688 A. I think there was a man by the name of Abraham.

Q. Do you know what John Smith was?

A. No, sir; I did not hear John Smith's testimony.

Q. And yet you belonged to a prominent society of Hebrews?

A. Yes, sir.

Q. Looking after the interest of the Hebrew emigrants?

A. Which have a society here.

Re-Direct Examination.

Q. Just when was it you went there?

A. I cannot remember the date. It was the end of July, the last days in July.

Q. You went there to co-operate with Mr. Sheppard in the prosecution if necessary?

A. Yes, sir

Re-Cross Examination.

Q. Did you report to Mr. Sheppard when you came back?

A. No, sir.

Q. Why?

A. I did not find anvthing to report. There was no Germans that made any complaint.

689 Thereupon the defendants called as a witness one J. R. PARKER, who, having been duly sworn, testified in behalf of the defendants as follows:

Cross Examination.

Q. Where do you reside?

A. In Florala.

Q. How long have you lived there?

A. About five years.

Q. What is your business?

A. I am a turpentine operator.

Q. Did you at any time during this year work in the turpentine quarters of the turpentine camp of the Jackson Lumber Company.

A. Yes, sir.

Q. Were you working for them?

A. No, sir.

Q. What was the nature and character of your work?

A. I had a lot of boxes leased or rented from them.

Q. When were you engaged in that work—from what period to what period?

A. I went there about the sixth of February.

Q. Last February?

A. Yes, sir, and left there, I think, about the tenth or the fifteenth of October.

O. Of this year?

A. Yes, sir.

Q. How regularly were you there?

A. All the time.

Q. Right there yourself?

A. Yes, sir.

Q. Now, then these boxes that you had leased, how near were they to the boxes or trees that were being operated by the Jackson Lumber Company's emplooyes?

690 A. They joined.

Q. Where did you stay while you were operating these boxes?

A. In the quarters.

Q. At the camp where the employees of the Jackson Lumber Company staid?

A. Yes, sir.

Q. Did you have any other connection with the Jackson Lumber Company than the mere leasing of the boxes?

A. That is all.

Q. You paid them rent?

A. Yes, sir.

Q. There was turpentine quarters where all the men staid at night?

A. Yes, sir.

Q. And you and your men staid there?

A. All staid there together.

Q. And the Jackson Lumber Company employees staid there?

A. Yes, sir.

Q. Did they take their meals there together?

A. Yes, sir.

Q. Do you know whether there was at any time during the time you were there any watchman over any of the men at night?

A. No, sir.

Q. You do not know or do know?

A. There was no watchman.

Q. Did they come and go as they pleased?

A. Yes, sir.

Q. Did you ever see any of the men brought back and returned and held there?

A. No, sir.

Q. Did you ever see a man whipped there?

691 A. No, sir.

Q. Did you ever hear of a man being whipped?

A. Not at that time.

Q. Who had charge of the turpentine business for the Jackson Lumber Company?

A. Mr. Lamater; he is the general manager.

Q. Now, when these men would come out to work there were the foremen with the men?

A. Yes, sir.

Q. Did the foremen go to work with the men, go with them when they would go to work and return with them?

A. They would be with them during the day, show them the work and how to perform it.

Q. Did they always go out with them in the morning?

A. Sometimes they would go ahead.

Q. And the foremen would follow?

A. Yes, sir.

Q. How about returning in the evening?

A. He would come in ahead usually and they would come in behind. He would start in on his horse. Of course he would travel faster than the men and the men would come in after him.

Q. Now, you say you know that there was no watchman over them at any time at night?

A. There was no watchman that I know of. I never heard of any watchman being there at all.

Q. You never heard of anybody being held in that camp against his will?

A. No, sir.

692 Cross Examination.

Q. Did you have men employed?

A. Yes, sir.

Q. What kind of men?

A. Negroes.

Q. Did you have any Hungarians?

A. No, sir.

Q. Did you have any of these fellows that came down from New York?

A. No, sir; I worked negroes altogether.

Q. Now, what were these men doing; what was the character of the work being done in the wood?

A. Chipping boxes and shipping turpentine.

Q. And you say they had foremen?

A. Yes, sir.

Q. Do you have foremen for that kind of work in your camp?

A. No, sir.

Q. You never heard of foremen in any other camp going with any class of labor except this particular kind of labor, did you?

A. Don't think I did.

Q. You do not have foremen to go out and come with your men?

A. I have men to keep up with their work.

Q. That is men to take checks, that is woods-riders?

A. Yes, sir.

Q. These men that went out from the Jackson Lumber Company were foremen?

A. They called them foremen. They work their men.

Q. You do not know of your own experience, you do not yourself handle men and do not know any men except them that work foreigners that have foremen that go in the woods with the men and come back with them?

A. That is all.

693 Q. Where was the whipping that you heard about?

A. Up at the log camps.

Q. That is a different camp from the turpentine camp?

A. Yes, sir.

Q. You did not stay up at the log camp?

A. No, sir.

Q. You never had occasion to stop there at any time?

A. Yes, sir.

Q. You never saw any whipping around there?

A. No, sir.

Q. Do you know Herman Osmenski, a little German Jew?

A. No, sir.

Q. Do you know Arthur Buckley?

A. I do not know any of them, only just seen them passing.

Q. You do not know when they were sent away from the camp?

A. No, sir.

Q. You do not know whether they were there or not?

A. No, sir.

Re-Direct Examination.

Q. Were your men working by the piece work or working by the day?

A. Piece work.

Q. You were asked if you ever saw any foremen sent out among the men. What work you have seen in turpentine camps is it work done by the day or work done by cutting so many boxes and quitting and going when they pleased?

A. Cutting so many boxes, generally the way they work.

Q. The usual rule is to cut so many boxes and not work by the day and you inspect those boxes and count them?

A. Yes, sir.

Q. These men working for the Jackson Lumber
694 Company were working by the day, were they not?

A. Yes, sir.

Q. Were they experienced ~~turpentine~~ men?

A. No, sir.

Q. Is there any skill required in cutting turpentine boxes.

A. Yes, sir; I think there is considerable.

Q. A man that is not accustomed to it does he have to be shown how?

A. Yes, sir.

Re-Cross Examination.

Q. Is cutting boxes the only kind of work done on a turpentine farm?

A. No, sir.

Q. Is not dipping and scraping part of the work?

A. Cutting, chipping, dipping and scraping.

Q. Did you have foremen for your gang for scraping and dipping?

A. We have head men.

Q. The same men who rides around and looks after the boxes?

A. Yes, sir.

Q. These men you spoke of as experts, they were not the ones that rode around and counted the boxes; they were the men that went with the laborers?

A. They went with them to show them.

Q. Did you ever see them show them anything?

A. Yes, sir.

Q. And you have seen them come back with them to the camp?

A. Yes, sir.

695

Re-Direct Examination.

Q. You have had a great deal of experience or not in working men in work of various kinds, mills, turpentine camps, etc.?

A. Turpentine is all I know.

Q. You do not know whether it is customary on railroads and everywhere else where men are employed by the day to have foremen, do you?

A. No, only just what I hear.

Thereupon the defendants to maintain the issues in their behalf called as a witness one F. D. SAUNDERS, who, having been duly sworn, testified as follows:

Q. You reside in Pensacola?

A. I do.

Q. What official position do you hold?

A. Deputy sheriff of Escambia County.

Q. You have been such for the last past year?

A. Yes, sir.

Q. Do you know whether any Government witnesses have been in jail since the preliminary examination in this case?

A. Yes, sir.

Q. How many?

A. About six or seven, I think.

Q. Have they been together where they could communicate?

A. Yes, sir.

696 Q. Can you give me the names of these witnesses?

A. I know the names when I see them. They are foreign names. We have got them on the books.

Q. Would you know the names if I were to call them off?

A. Yes, sir.

Q. John Smith?

A. Yes, sir.

Q. William Keller?

A. Yes, sir. Another one by the name of Danish; we called him Ping-Pong.

Q. Trulich Mihaley?

A. Yes, sir.

Q. Maginnis?

A. Yes, sir.

Q. Jordsman?

A. Yes, sir.

Q. Louis Abraham?

A. Yes, sir.

Q. How long were they in there together?

A. They have been there for over two months I think.

Q. All of them?

A. Well, a part of the time. All of them were together except Maginnis. He was not put in there by the Government. I was notified after he was put in there to hold him—to let them know—they wanted him.

Q. Has Maginnis been in there with them all the time?

A. No, sir.
Q. How long was he in there?
A. In there about three weeks or a month—until he broke out of jail. He is in there now, though.
697 Q. When was he placed in there?
A. Last night.
Q. Did you have Max Schont in there?
A. Yes, sir.
Q. What was he in there for?
A. Grand larceny.

But the Government's counsel did then and there make motion to strike the answer of the witness, which motion was thereupon granted. To which ruling of the Court the defendants did then and there except.

Q. Do not answer the question. I ask it to get it before the Court. Was or was not Maginnis placed in jail under a charge of larceny.

But counsel for the Government did then and there object to the said question, which objection was then and there sustained.

To which ruling of the Court the defendants did then and there except.

Q. Is or is he not now within the reach of this Court?

But counsel for the Government did then and there object to the said question, which objection was then and there sustained by the Court. To which ruling of the Court the defendants did then and there except.

Q. Is or is not he now in the county jail under a charge of larceny?

But the counsel for the Government did then and there object to the said question, which objection was then and there sustained.

To which ruling of the Court the defendants did then and there except.

Q. Now, as to the other: Don't answer these questions until the Court has ruled upon them. Was or was not Max Schont put in the county jail here in Pensacola under a charge of grand larceny since the twenty-third day of July, 1906? 698

But counsel for the Government did then and there object to the said question, which objection was then and there sustained.

To which ruling of the Court defendants did then and there except.

Q. Is or is not Max Schont now in jail?

But the counsel for the Government did then and there object to said question, which objection was then and there sustained.

To which ruling of the Court the defendants did then and there except.

Q. Did or did not Max Schont since the twenty-third day of July, 1906, plead guilty in the Criminal Court of Record of this county to the charge of grand larceny?

But counsel for the Government did then and there object to the said question, which objection was then and there sustained.

To which ruling of the Court the defendants did then and there except.

Q. Do you know whether Max Schont is now within the jurisdiction of this Court?

But the counsel for the Government did then and there object to the said question, which objection was then and there sustained. To which ruling of the Court the defendants did then and there except.

Cross Examnation.

Q. I believe you said there was seven or eight of the Government's witnesses in jail there?

A. Yes, sir.

699 Q. They were there as United States Government witnesses?

A. Yes, sir.

Q. Held as witnesses?

A. All except Maginnis.

Q. Now, do you know if H. M. Stokes was there in jail?

A. I do not know.. There are a good many names and every month I take the prisoners over and get familiar with the names and the faces. I know them all when I see them.

Q. John Smith was there?

A. Yes, sir.

Q. John Davis?

A. I think so.

Q. William Keller?

A. Yes, sir.

Q. Louis Abraham?

A. Yes, sir.

Q. Albert Daniah?

A. Yes, sir.

Q. Any others that you think of? Trulich Mihaley? Was he there all the time?

A. I do not think he was there.

Q. And Jordsman?

A. That is I do not remember seeing him all the time. I saw one or two lately, that is in the latter part of the time in jail that I do not remember seeing the first part.

Q. Was Manuel Jordsman, the Bulgarian, there?

A. The cripple fellow?

Q. Yes, sir.

A. Yes, sir; part of the time.

700 Q. John Davis, John Smith, William Keller, Manuel Jordsman, Trulich Mihaley, Albert Danish and Louis Abraham. You remember all those as being there, do you?

A. Yes, sir.

Q. Any others than those seven?

A. I know of no others.

Thereupon the defendants in order to maintain the issues in their behalf called as a witness LEE DANIELL, who, having been duly sworn, testified as follows:

Direct Examination.

Q. I suppose this will be objected to so I will simply state what we expect to prove to save time. We offer to prove by this witness that he reported stenographically the testimony of the witnesses for the Government and for the defendants in a trial under an indictment charging W. S. Harlan, S. E. Huggins and C. O. Hilton and Jeb S. Howell with conspiracy which trial was begun in this Court on the 14th of November and was concluded on the 23rd day of November. That among the witnesses sworn and who testified for the Government on that occasion, was one John Smith, and that the testimony of John Smith was substantially the same as the testimony given at this trial, and that the same facts and transactions that are now relied upon for conviction were offered in evidence at that trial.

We further offer to prove that during the trial William Keller was offered as a witness, and that the facts and transactions testified to by the witness Keller at that trial were substantially and in effect the same as the facts, transactions and circumstances testified to by him upon this trial— 701

Government's counsel suggests that the jury should be withdrawn from the court room during the presentment of this motion.

By the Court:
The jury can pass out to the jury room.

We offer to prove by the witness that the testimony of John Foster at that trial was substantially, and in effect, the same as his testimony upon this trial; that he narrated the same facts and transactions to the jury.

We further offer to show that the witness, Davis Clary, a witness for the Government at that trial, testified to substantially the same facts, acts and transactions as testified to by him at this trial.

That the witness, Arthur Buckley, was examined in behalf of the Government at that trial, and testified substantially to the same facts, acts and transactions as he testified to in this trial and none other.

By Government's Counsel:
That is not substantially correct.

We offer to prove that the witness, Manuel Jordsman, was examined in behalf of the Government at that trial, and testified to the same facts, acts and transactions as testified to upon this trial, and none other.

That the witness, Charles Haas, was examined in behalf of the Government at that trial, and testified to the same facts as he testified to at this trial.

And that Dr. Craig was examined as a witness at that trial and testified to the same facts, acts and transactions as testified to at this trial, and that no other testimony was given in behalf of the Government at that trial other than that given by the witnesses now, and that the testimony then given by the witnesses named covered every transaction covered by the witnesses upon this trial, and in detail. 702

That is offered in behalf of the defendant, W. S. Harlan.

By Government's Counsel:
We object to this. The question in this matter has been thrashed out at the time the plea interposed by the defendants was offered. We think that as this is being made a record, it should be a correct record. He states that in the trial of W. S. Harlan for conspiracy, but he omits to say for the return of one Rudolph Laninger, and at the beginning of this trial it was distinctly announced that the Government abandoned its attempt, that it abandoned that part of the indictment with reference to the return of Rudolph Laninger—

By the Court:
We have all that in the record. The counsel has the right to make any offer he pleases. You cannot amend his offer. You can make any reply you desire to make.

By Government's Counsel:
We ask that it be made a part of the record.

By the Court:
Of course you have the record; the record of the two in-

dictments, the record of the first indictment and the record of this indictment. They are both parts of the record and nothing can be added to change the record.

By Defendants' Counsel:
I do not think the Court is at liberty to make any motion. I do not think the counsel can make it either.

By Government's Counsel:
I simply want to point out—

By the Court:
You may have a chance to point that out later; but counsel has the right to make any motion he pleases.

By Government's Counsel:
We would like for the record to show when this offer was made—that it was made before the close of the testimony in this case.

703 By the Court:
The record will show it. It is all there; each side has it as they wanted it. The objection will be sustained. But to the overruling of said offer the defendants did then and there except.

Thereupon the defendants in order to maintain the issues in their behalf called as a witness one F. W. MARSH, who, having been duly sworn, testified as follows:

Direct Examination.

It is understood that the defendants have offered the entire record except the testimony under indictment 599.

By the Court:
The Court has admitted the indictment and the record of the other trial. It is quite pertinent and important. The Court is clear. The ruling is this: That the offer made in the absence of the jury was overruled and ruled out. The offer you make now is to introduce the indictment in the other case and the minutes of the trial, the book record in the hands of the clerk—that is admitted. Those two things.

By Defendants' Counsel:

And they have admitted now that this evidence which I offered to prove before was the evidence which was given—not the identical evidence, but that I am offering to prove that evidence that was given under the indictment—I am offering to prove this evidence which I have referred to.

704

Thereupon the defendant, W. S. HARLAN, being duly sworn, testified as follows:

Direct Examination.

Q. What is your name?
A. W. S. Harlan.
Q. Are you one of the defendants in this case?
A. I am.
Q. What position, if any, do you hold with the Jackson Lumber Company?
A. Stockholder and agent and manager.
Q. Will you state fully and in detail the various squads of foreigners that came to work for the Jackson Lumber Company—when they came there and the circumstances under which they came and how they came?
A. Well, sometime in April I corresponded with Swartz's Labor Agency in New York for two hundred men, and to the best of my recollection it was the latter part of May we got the first shipment.
Q. Have you got that correspondence?
A. I have.
Q. Where is it?
A. On the desk there.
Q. When was that first communication?
A. April twenty-first.
Q. Of what year?
A. 1906.
Q. Did you get any under that correspondence?
A. I did.
Q. When did they arrive?
A. The first correspondence was April twenty-first and the contract was signed with Swartz on April thirtieth for the men, stating the terms of the contract.
705 Q. When did they arrive?
A. It must have been about the middle of May that the first shipment came.

Q. Have you any communication with you showing that you stipulated fully and in detail what these men were to do and requesting the agency to make them fully understand what they were to be employed at?

A. I have.

Q. You have it there with you?

A. I have.

Q. I will ask you to read it.

But Government's counsel did then and there object to the reading of the correspondence upon the ground that it is immaterial, irrelevant and opens the door for the defendants and is leading.

And the Court did then and there sustain such objection. To which ruling of the Court the defendants did then and there except.

Q. When, now, was the second lot received?

A. My recollection of it was about a week or ten days after the first lot.

Q. How many lots did you get there?

A. I could not anwer that exactly. We got one hundred and eighty-six men altogether. Thirty-eight the first shipment and one shipment of thirty-four and another of twenty-eight, one as low as thirteen. They came—thirty-eight is the most we got at any one time and probably nine the least.

Q. You got one hundred and eighty-six all told?

A. I think so.

Q. You never applied for any of this foreign labor until this year?

A. Never did.

706 Q. Until April?

A. April.

Q. What were your motives in bringing the labor here?

But the counsel for the Government did then and there object to said question, which objection was then and there sustained. To which ruling of the Court the defendants did then and there except.

Q. Do you know anything of the shipments that were brought here in June and July—do you know of some shipments brought here in June and July?

A. Yes, sir.

Q. Were they procured through the agency in New York?

A. Yes, sir.

Q. Both shipments?

A. All the shipments.

Q. Mr. Harlan, how are these bosses out there in your camps arranged? Do they have any connection with each other?

A. Why, I cannot answer that judge. I do not hire the bosses.

Q. You have nothing to do with employing the bosses?

A. Only about seven superintendents on the plant that I hire.

Q. I wish you would explain fully to the jury the system at the mill, the relations, if any, of each to the other—explain fully and in detail so far as you know.

A. The business is divided into about seven departments and each department has a superintendent at the head of it, of which just speaking from the defendants, Mr. Gallagher is in charge of the logging department and Mr. Lamater is in charge of the turpentine department. Now, they report to me directly. Mr. Gallagher renders me reports at stated intervals and Mr. Lamater does. Now, as to who works under Mr. Gallagher—I know that Mr. Bellinger is one of his 707 leading foremen, but the only reason I know it is I have seen him, but I have nothing to do with Mr. Bellinger. Mr. Gallagher can hire Mr. Bellinger or discharge Mr. Bellinger or hire another man. I know nothing of that. Mr. Gallagher I look to to put the logs in the pond. It is his duty to put the logs in the pond. It is Mr. Lamater's duty to chip the trees and make the turpentine. They are under separate departments. Mr. Lamater has nothing—has no authority over Mr. Gallagher and Mr. Gallagher has no authority over Mr. Lamater. Sometimes it is necessary for them to confer with each other when Mr. Gallagher wants to move on to a particular piece of timber he can request Mr. Lamater to scrape the timber and get out of his way, but only in a matter of conference—they have no authority over each other. There are five other departments that have no relation to the matter I am talking about.

Q. I wish the jury to understand the entire matter.

A. Well, I will go over them. We have men in charge of the commissary who does nothing at all, but I have nothing to do with the commissary, purchasing, I buy no goods at all for the commissary—the man in charge of the commissary buys all the goods, hires his own help, clerks that do the work, nine, ten or eleven of them. There is not a man in the commissary that I hire except the man that has charge of it. He renders me a report every night of his day's sales, that is it is left in my office of his day's sales and of the bills that he contracts—they are left on my desk once a week.

Q. There is a commissary department?

A. Yes, sir.

Q. There is a logging department?

A. Yes, sir.

Q. There is a turpentine department?

708 A. Yes, sir.

Q. And the milling department, how many does that have?

A. That is in three departments. The saw mill man in charge of the saw mill has entire charge of the taking of the logs out of the pond and sawing them and delivering them to the shipping clerk or foreman.

Q. Now, you have a boss for each department?

A. I call them superintendents, but each of these men have other men under them that are foremen of different kinds.

Q. There is a superintendent of each one department?

A. Yes, sir.

Q. And under those superintendents are the foremen?

A. They have probably, Mr. Gallagher may have four or five different foremen; he may have a railroad foreman, a saw boss, a team boss and loading boss. He may have probably five or six—I do not know just exactly how he has his matters.

Q. You are general manager?

A. Yes, sir.

Q. All the men report to you do they—I mean the superintendents of the various departments?

A. Yes, sir; I get reports from them—that is of the nature of their work and what they have been doing all the month. Some departments make daily reports, some weekly and some monthly.

Q. And to whom do the foremen report?

A. To their different heads.

Q. They make reports to the superintendents?

A. Yes, sir.

Q. Now, what is Mr. Lamater?

A. He is superintendent in charge of the turpentine works.

709 Q. What is Mr. Gallagher?

A. Superintendent of the logging department.

Q. You have nothing to do with the foremen under them?

A. Nothing at all.

Q. Do you have anything to do with the men that is under them?

A. I never do. I never take anything up with them. I deal with Mr. Gallagher and Mr. Lamater—I look to them to get the results.

Q. Can you make me a diagram showing me the condition of that railroad where the log camps are located and where the turpentine establishment is and the distance apart?

A. Yes, sir; I can give you the location exactly if you have a section map. (Witness here draws diagram).

Q. What is the distance from Lamater's place to the mill?

A. Four and a half to five miles.

Q. What is the distance from the log camp to the turpentine camp?

A. About four and a half miles.

Q. How long has the turpentine camp been located where it now is?

A. I think this is the second year.

Q. Operations have been carried on this past year?

A. Yes, sir.

Diagram drawn by witness here offered in evidence as follows:

710 Q. Have you ever had any understanding with any of the defendants as to the control of labor which should come into their camp—the holding of them or anything of that kind?

A. You mean as to the control of them?

Q. Yes, sir.

A. No, I have not.

Q. You have had no conversation with any of them in regard to it?

A. None whatever. If you mean did I ever have any conversation with them about restraining anybody against their will, do you mean that?

Q. Yes, sir.

A. I never did.

Q. Did you ever have any conversation with them as to how they should manage their men out there?

A. I never did.

Q. Did you have anything to do with the distribution of the men that came there between the various departments?

A. Well, when we would get in a shipment of men—I would—my reason for getting the men in the spring men were getting scarce, labor was in the cotton fields and I realized the necessity of getting extra labor. I had advertisements in Georgia and South Carolina and it was coming in slow. In fact we carry advertisements in Georgia all the time for help—have got probably fifteen advertisements in the papers over there now, and I saw the hot weather was coming on and we would be short of labor and for that reason started to get it in. At first I gave Mr. Gallagher the first few shipments, probably fifty men to seventy-five men. He needed the men worse than anybody else on the plant. He was shorter of help. I think probably we kept a shipment or so at the mill after that and then I think Mr. Lamater probably got some. After we had gotten probably one hundred 711 men I think Mr. Lamater got thirty-five or forty. It was distributed about in that way. As the men would come in why I would know about who needed the laborers most and they were turned over to who needed the laborers the most.

Q. Then shipments were not made for any particular boss or foreman?

A. No, sir; the contract I have here shows that.

Q. Contract with whom?

A. With the people that I wrote to.

A. Well, I think you can make the statement. What I want to get at these various shipments did not come for any particular foreman.

A. No, sir.

Q. They came to the Jackson Lumber Company, who had the distribution of them after they got there?

A. I expect I had the distribution as much as anybody—either I or the assistant manager. If I was away the assistant manager would make the distribution.

Q. According to the needs of the various superintendents?

A. Yes, sir.

Q. If you had to shift them from place to place did anybody have charge of that?

A. No. Very often I would hear the foremen talking among themselves. They had some they did not want and would try to shift them over onto others, but I had nothing to do with the shifting.

Q. When they had some men they did not want they would shift them among themselves without regard to you?

A. Yes, sir. On nights and particularly on Saturday nights the different superintendents would be around the office and I would hear conversations between them in that way.

Q. In regard to the men?

712 A. Yes, sir. One would say, are you short of men and the other would answer yes, and they would shift men from one place to another.

Q. Were those superintendents required to come in on Saturady nights and have a conference or understanding of any kind as to what was going on and what was needed. In other words, did they come together and consider business from time to time?

A. I was in my office every night and in the afternoon. It was nothing for a superintendent to be in there any night.

Q. Did you have them come together?

A. No regular meetings, no, sir.

Q. They would sometimes be down there together—sometimes one would be there and sometimes another?

A. Very seldom that two would be in my office together.

Q. There never was any discussion between you as to what methods should be adopted or whether any should be adopted for the division of the men there?

A. No, sir.

Q. Was there ever any understanding between you and any of the foremen or superintendents that you should hold any men there?

A. No, sir.

Q. Directly or indirectly?

A. No, sir; directly nor indirectly.

Q. You say the first shipment of these men arrived, that is the men that you got through this agency sometime in May?

A. Yes, sir. I am not prepared to say just when, but it was between the fifteenth and last of May?

Q. You have some dogs on the place?

A. Yes, sir.

Q. What kind of dogs are they?

A. It would take me a long time to enumerate them all that we have got.

713 Q. I mean the ones kept in your back yard?

A. There are none kept in my back yard. In a kennel back of my lot we keep one fox hound and two dogs that I got from de Funiak Springs. We call them negro dogs and there is a bugle hound with them, and three puppies. I believe the bugle hound and the three puppies are down to the barn. I have not seen the dogs in six months.

Q. When did these dogs come there?

A. October a year ago I think it was I got the first dogs.

Q. What did you want with these dogs?

A. Well, Florala and Lockhart is right at the bottom edge of Covington County. There are convict camps about two miles north of us and there are convict camps about twenty miles north of us at Sanford. Then there are other convict camps about eight miles south of Andalusia, then for four miles west of Andalusia there is another convict camp. Well, at all of the convict camps they have dogs. Andalusia, the county seat, has dogs. At Florala and Lockhart we had considerable trouble there, being a new town, only been there four years, and I find in new places you do not get the best class of labor at first; you get a floating population, and we were troubled a great deal with stealing and lot of breaking and even killings. We have had several killings at Lockhart and Florala, being a new town, and the places totaled up probably five or six thousand people right in that immediate vicinity and all had grown up in the last four years. Well, I did not know what to do in the matter. We had at that time no deputy sheriff at Florala and if any depredations were committed it would be sometime before we could hear from it and about that time Mr. Lamater came into me and told me something about a man being killed in his quarters, or a watchman shot or a man had been killed, or something of that
714 kind, and says we have just got to get some dogs
here. These negroes are giving us trouble and everything and if we just had some dogs here it would keep down some of this lawlessness. Well, I will say this, before he came I was in correspondence with Daniel Campbell, and shortly after that I got a pair of dogs. Mr. Campbell bought them in Texas and shipped them over to me and that was to the best of my recollection was in October a year ago. We have had them about fourteen months.

Q. You had been working negroes out there in the turpentine camps?

A. Yes, sir.

Q. And you got these dogs because these people had been killing each other?

A. Yes, sir. It was more to keep down disorder. Don't understand me, not in the turpentine camp alone, but also in Lockhart and some of the people in Florala talked to me about getting the dogs before.

Q. You advised with various—

A. I remember Mr. Elliott. Mr. Elliott has a pack of fox hounds.

Q. Different people?

A. I can recall him now about it.

Q. And they were carried there last October a year ago?

A. Yes, sir.

Q. Have you received any other dogs since that time. I mean that you kept there as you keep these?

A. No, sir. I would like to explain to the jury why dogs are kept in kennels. You cannot keep a man trailing dog and let everybody get up to him. It is not because they are vicious—every dog I have got I ain't afraid to turn in with my little boy, but you have to keep them twelve or fifteen feet away from a man where they cannot get the scent of different men all the time. That is the object in having the
715 double fence—to keep anybody from having access to them—to keep them keen in their scent.

Q. Have these dogs to your knowledge been used there to return laborers who had run away from what he owed the company?

A. Never to my knowledge.

Q. Did you know at the time that any person after that had used those dogs for that purpose?

A. I never heard of returning anybody for what they owed.

Q. Now, then, have you ever known—

A. I can qualify that by saying except what I learned at Pensacola.

Q. Have you ever known of any man being returned or any number of men being returned to any of these camps or works for the purpose of working out what they owed the company?

A. I never did.

Q. Did you ever hear any of your foremen or men talking about it and discussing it?

A. I never did.

Q. Did the laborers have communication with you and access to you?

A. Yes, sir; every man could come and talk to me any time he wants to unless I am otherwise engaged.

Q. Did they do it?

A. Yes, sir.

Q. Regularly or not?

A. It is no uncommon thing for three or four of the laboring men, I suppose you mean—

Q. I want to know whether the general laboring men around there have access to you and come to you with their complaints?

A. Yes, sir.

Q. Do they come to you?

716 A. Yes, sir.

Q. They do come to you?

A. Yes, sir.

Q. Has any of them ever made complaint to you at any time of the mistreatment of the superintendents or bosses or foremen?

A. I have had the laboring men—for instance, the negro man we had on the stand, he came to me because the saw mill man had changed him and he wanted to get back to his old work.

Q. Did you know of any whipping going on out at the log camps or anywhere else?

A. I did not. I believe I heard of the Maginnis scrap a few days after it happened.

Q. You heard of that only one?

A. That is all. I never heard of the Bulgarian fight at all. I cannot remember of ever hearing of any scrap except the Maginnis fight.

Q. There is a telegram here offered in evidence before the jury; explain that to the jury (handing witness telegram).

A. Well, I cannot vouch for the wording of the first telegram, nor for the second one; in fact I knew nothing of the second one.

Q. You never saw the second one?

A. No, sir. I did not write that. I know nothing about the wording of it at all and knew nothing about it until it come up in the last trial.

Q. How about the other?

A. There was a telegram of about this kind of wording—I cannot say it was exactly the same wording, handed to me one day by the operator—

Q. Where?

A. My recollection was I was standing over just inside of the saw mill or right at the side of the saw mill

717 talking to the saw mill foreman.

Q. Can't you go on there and state every detail and the circumstances without me asking you?

A. On the date, I suppose it was July twenty-first, from the date of this—I could not remember the date, I was at the saw mill and the operator came up and handed me a telegram that I suppose had the same wording as this. I was busy at the time with the saw mill foreman and I glanced at it and turned around and handed it to him and said I do not know anything about it, take it to Sandor and see what to do about it.

Q. You told him to take it to Sandor and see what to do about it?

A. Yes, sir. My reason for giving him that kind of an answer was that he was up at the office and I believe I told him to have Sandor call up the camp—I believe I did—I would not be sure about that, but I did not authorize the sending of any message like this. If I did it would not have been written by Mr. Sandor, but by me.

Q. How far was your mill from the telegraph office at that time?

A. Some distance, well, about fourteen hundred feet.

Q. And you were down at the mill?

A. Yes, sir.

Q. And Mr. Sandor was up at the office?

A. Yes, sir.

Q. In the same building that the operator was in?

A. Yes, sir.

Q. And you do not know whether you told him to tell Mr. Sandor to call up the camp or not?

A. I could not say that for sure to call up the camp. I swear positively that I did not authorize the sending of this message in this way for the reason that Mr. Sandor 718 does not work for me at all. What I mean by that is if I would find that I wanted a message of this kind sent I would have either told the operator exactly what I wanted to say or told him to go to Miss Noble, who does all my work, and have her answer it.

Q. When you sent a telegram on any subject—

A. Whenever I sent a telegram it is given to my stenographer and she takes three copies of it—one copy for the operator, one copy for our files and and a copy to go with the letter confirming the telegram, excepting this way, if any telegrams are sent after her office hours I sometimes would tell the operator to answer them and he would keep a copy that she could copy in the morning.

Q. Now, when you had that telegram and it was handed to you and you spoke to him you simply referred him to Mr. Sandor?

A. I simply referred him to Mr. Sandor.

Q. You do not know whether you told him to tell Mr. Sandor to call up the office?

A. I cannot say that positively.

Q. You did not give any instructions to him or to Mr. Sandor as to what telegram should be sent?

A. No, sir.

A. You simply referred him to Mr. Sandor?

A. Yes, sir.

Q. Do you know Barsoda?

A. I guess that is his name. I will say yes, I think that is his name.

Q. Did he ever work out any indebtedness that he owed the concern?

A. He likes about sixty dollars of working it out yet.

Q. Is he still there?

A. No, sir.

Q. When did he leave there, or do you know?

719 A. About ten days after his contract was signed —probably two weeks.

Q. Do you know when he left yourself?

A. Only by referring. I knew when he was leaving. I told him to go. I told him to go on, he was no good. He kept going behind the longer he stayed.

Q. Did you make that afiidavit (here handing witness paper)?

A. That is my affidavit.

Q. State to the jury the circumstances under which that affidavit was made?

A. Well, this man Barsoda and his wife—there was another little Hungarian and his wife—I heard of them being in Florala one Sunday and all of them drinking and quarreling or something of that kind—that was Barsoda and his wife and another Hungarian with a woman that came from New York on Monday morning—I cannot say who it was, whether it was Mr. Sandor or Mr. White or somebody about the plant came in and told me that this man Barsoda had gone away and left his house and had taken the sheets and pillow cases and one thing and other that he got from the store without paying for them and some cutlery I believe. Well, whether I phoned to Mr. Moneke or not or whether to the people at Florala or not I do not recollect, or whether Satterwhite did it, but anyhw I had that warrant gotten out for him.

Q. Did you prepare the affidavit?

A. No.

Q. Did you tell the justice what you wanted to charge him with?

A. No, I do not know as I did. I really do not know whether I talked to him or not. I either did or else some one did at my instigation.

Q. Was there any desire to have Barsoda re-
720 turned under that charge?

A. I did not want him.

Q. You did not want him?

A. He had gone and if he had not taken as many of the things out of the store as he could get in his trunk I would not have troubled him.

Q. I understood you to say that he was told to go?

A. That was later, after he came back.

Q. He was sent away still owing the company?

A. Yes, sir. I have got his account here showing what he does owe, $58.45 is what he owes the company.

Q. Did you make this affidavit against him in good faith believing him to be guilty of the charge?

A. I did.

Q. Did you know of any such thing as a pass for laborers when they went to leave the employment of the company for good so as to enable them to get away?

A. I never heard of such a thing until that foreigner swore to it up here.

Q. I suppose you read this letter or dictated it (handing to witness letter from W. S. Harlan to Pensacola Journal.)

A. I dictated a letter along that line. I could not say that I ever stamped that. I have a stamp and Miss Nobles has authority to use that stamp in my absence after I dictate a letter. I generally read over my correspondence after it is written —possibly I did that, but I could not say whether I did or not.

Q. I see this statement in this letter: "Some of the men who came were of the no-count class and were trying to get away before they left New York, merely working for the New York agents so they would get their employ-
721 ment fee. These men kept trying to escape after they were here." What about that?

A. All I can say would be what I would hear about the men after they come there.

Q. After the men came there; when did you hear that?

A. Well, I probably would not hear of it for three or four days—I do not know as I ever heard of the Fort Valley incident until after the first trial.

Q. I will ask you this question: Were not these men making their escape or leaving there, going away from the employment of the company without notifying anybody constantly?

A. I know this, that very few lots that left New York I paid passage money for from one to five more than ever reached Lockhart all the time.

Q. I mean after they got to the camps, didn't these men leave there and not return?

A. Oh, yes.

Q. Was any effort made to apprehend—didn't numbers of them go away?

A. Numbers of them went away. I cannot swear that—only what I heard.

Q. You simply understood that men had gone?

A. I heard it talked over by the men, for instance, when this fellow that is in jail now, that day the fight—I heard at the time that he left that there was seven others went out—I heard of it the next morning and nobody went after them that I ever heard of. Some one was talking of it in my presence the day after they got away—I will tell you further about it, too, where I heard it, Mr. White, the superintendent of our naval stores, reported to me that he saw them at Flomaton.

722 Q. Was anything said when they went away between any of your superintendents or any of your employees and yourself with respect to bringing any of them back?

A. I never authorized any one to bring them back.

Q. Do you know anything about this man Krum spoken of here as being arrested?

A. Yes, sir; I am carrying on a correspondence with Mr. Krum now.

Q. What are the facts and incidents connected with that?

A. Why Krum laid around the boarding house there and would not work, and the boarding boss came to me one morning—I call him the boarding boss down at the hotel—and asked me to let him know about a man; he said he owed him something and my recollection is it was over twelve dollars and he wanted to know what to do about it. I says, why don't you get him to work. He said the scoundrel would not work over two or three days in the week and I sent for Krum and got him in the office and I told him of the complaint of the boarding boss and told him you may not know it, but you can be arrested in this country for not paying your board, and I says the best thing you can do is to go to work and keep your board paid up. He made some excuse to me, he was sick, he could not work. I told the boarding boss what was done and a day or two after that I think the boarding boss went along with me and we went to Florala and when I got there Mr. Braswell, an attorney there, advised me that we could file charges against him for transportation, too, and I think the whole thing was included in the charges, transportation and board, twelve dollars for board and transportation, whether he had paid a little on it or not—I think we included it in the charges.

Q. You were advised that was the law in the State of Alabama, were you not?

A. I never was up until that time.

723 Q. Mr. Braswell then advised you?

A. The lawyer that does our work at Florala advised me to that effect.

Q. You made it in good faith?

A. I certainly did. Before that I had always understood that you could hold a man on a contract for getting money under false pretenses—that is if he misrepresented to you, but I never knew there was a transportation clause in that law—that has come out during this trial.

Q. And he suggested that it was an offense?

A. Yes, sir.

Q. You mean you understood the man could be prosecuted criminally?

A. Prosecuted criminally.

Q. And held to answer the charge and carry him back and hold him in camp?

A. No, I understood that it was a misdemeanor.

Q. Was there any desire to take the man back to camp?

A. Krum?

A. Yes, sir.

A. I did not want him.

Q. Why?

A. He was a no-count man. He went to jail and was there three days I think and about every half hour in the day somebody would come and see me and ask me to get him out.

Q. Do you know whether or not any of the men which were in the camps—do you know this to be a fact or not that the men had absolute liberty and freedom—the employees?

A. All the employees—everybody, every employee of the Jackson Lumber Company have absolute freedom to do as they choose—I mean as long as they conduct themselves in an orderly way.

724 Q. Does your duties take you around among the laborers?

A. I was going to qualify that about the privilege of going back and forth. About a year ago we found that a good many of the woodsmen would come in during working hours. The first train comes in about eight or nine o'clock in the morning and then another about noon and another about three o'clock and we found a good many of the darkies that lived in Lockhart and worked in the woods would go out on the early train and would only work a half a day and then come in. We got very short of help and I remember talking the matter over with Mr. Gallagher and told him that I believed it would be a pretty good idea to let no one come in on the train during working hours until after six o'clock unless they could come to see him and get a permit and in that way we would know everybody that quit and could keep the men in the woods and get a real day's work. They would probably want to make a half day and make one dollar and a quarter or a dollar and a half and then come in and rest the balance of the day, and that is the reason we made the order. Everybody could ride going out any time during the day.

Q. Do you know of your own knowledge or from the general reports about there what kind of men these were—these foreigners that were brought in there?

A. Yes, sir; I have a pretty good idea. I had two of them arrested Saturday—

But counsel for the Government did then and there object to the witness answering the question, which objection was then and there sustained. To which ruling of the Court the defendants did then and there except.

Q. Has Mr. Newlander ever been a foreman or a boss, anything connected with any of that work up there?

A. No, sir.

725 Q. What did he do?

A. He is now time keeper at the woods.

Q. I mean at that time—June and July?

A. Mr. Newlander did not come there until about the twenty-fourth or twenty-fifth of July. He left New York on the nineteenth of July.

Q. And he has never had charge of any men?

A. No, sir; not to my knowledge.

Q. What are Mr. Sandor's duties?

A. Mr. Sandor answers correspondence regarding naval stores and grades rosin.

Q. You mean goes to the woods and inspects?

A. Inspects it and buys some rosin.

Q. What did Big Harry do?

A. I do not know what his duties were.

Q. Archie Bellinger. What were his duties?

A. I think he is Mr. Gallagher's head man in the woods; in fact when Mr. Gallagher goes away he leaves orders with Mr. Bellinger what to do and I think he is his head man in the woods.

Q. Do you think of any other fact or transaction which you wish to mention or relate?

A. I cannot think of anything.

Q. What is the distance between the hotel building—you heard Donkey's testimony the other day?

A. Yes, sir.

Q. What is the distance from the hotel to the office?

A. The hotel is on the corner of Mohawk and Cherokee avenue, and the office is on the corner of Cherokee avenue and Chippewa street, four hundred and fifty feet apart and one hundred feet across the street. The blocks are four
726 hundred and fifty feet—that is east and west.

Q. Which way is the hotel from the office?

A. West and across the street.

Q. A block away?

A. The hotel is in the same block opposite. I will draw you a diagram. (Witness here draws diagram.)

Q. How far does the office building set back from the edge of the street?

A. Thirty feet in and thirty feet in this way.

Q. How far does the hotel set back?

A. The same distance. All the buildings on that street set the same distance in.

Q. What is the length of the hotel?

A. I could not tell you exactly—eighty-four feet.

Q. And this building?

A. That building is sixty feet.

Q. Both of them are thirty feet inside of the street?

A. Yes, sir. There is another matter, Judge. Dunkey claims to have stood on the gallery of the hotel—I think you will find his testimony says that he was sick and in bed that week. Now, there is a building that interferes with the sight from the hotel down ths way to the office there. There is the postoffice and meat market between them. They come out to the building line.

Q. Are they one story buildings?

A. They have fourteen feet studding and all have square fronts.

Q. You say that this occurred at the corner of the commissary. How far does that building set back?

A. Thirty feet and a ten foot gallery around it.

727 Q. You mean the gallery is thirty feet back?

A. Yes, sir.

Q. These buildings here come flush?

A. Yes, sir.

Q. How far are these buildings from the hotel?

A. One hundred and forty-six feet from this corner there.

Q. How far from the hotel there?

A. Two hundred and ten feet from that point to there; the distance may vary some.

Q. But they are substantially correct?

A. Yes, sir; won't vary more than twelve feet at the outside.

Q. Where were you when Dr. Lesser went to the camps?

A. I do not know where I was. I was not in Lockhart.

Q. Were you gone anywhere?

A. I am not at Lockhart more than two-thirds of my time—three-quarters at the outside. I am away from a week to ten days every month.

Q. Did you have any knowledge or intimation that he was coming there?

A. I did not. I never knew that he was there until I returned—probably two or ten days after he was there—three or four days at the least.

Q. Does Doctor Trammel have anything to do or any interest in the mill or log camps?

A. Nothing. He is only the company's physician—that is all.

Q. He has no charge of men?

A. No, sir.

Q. He has no interest in the business?

A. None at all. He is on a salary.

728

Cross-Examination.

Q. As general manager of the Jackson Lumber Company you have complete supervision and complete control of all these several departments that you have testified to about?

A. Yes, sir.

Q. And you say that you are there—that is your home is in Lockhart?

A. Yes, sir.

Q. You are frequently out at the camps, frequently at the lumber or long camp as has been described here?

A. I could not say frequently, but I am out there occasionally.

Q. You have an opportunity of knowing what is going on out there?

A. I would like to tell you about how often I go out there.

Q. Once a week ?

A. No, sir.

Q. Once a month?

A. No, sir.

Q. Once in two months?

A. I suppose once in every five or six weeks.

Q. How many times were you out there in July?

A. I could not answer you. Not at all according to my recollection.

Q. How many times were you out there prior to the fifteenth of August?

A. You mean in August?

Q. Yes sir.

A. I can only remember Mr. Sheppard of my last visit. I went out there with this lady that is working up this case—that was here.

Q. You saw that lady? What do you know about her working up what case?

729 A. This peonage case.

Q. That was in August, was it not?

A. The date of her being there?

Q. The time you went out to the camps with her.

A. Yes, sir; it was August the fourteenth.

Q. Now, you say that these foreigners came down there—the first cargo came there in June?

A. No, I said in May. It might have been after the first of June. From the twentieth of May on to the four or fifth of June.

Q. I understood you to say there was only about two shipments of Hungarians?

A. You misunderstood me. I said there was several shipments.

Q. Of Hungarians?

A. Of all nationalities.

Q. What shipment was it that Mr. Newlander came in?

A. In the very last shipment we had.

Q. That was in July?

A. He left New York—here is a telegram I received from him on the nineteenth of July.

Q. Let us have it.

A. It is of no consequence except that Mr. Gallagher had wired Mr. Newlander not to ship any more laborers. He wired he had fifteen men that have their furniture ready to take this trip, answer quick if you want them.

Q. That was from Sandor or Newlander?

A. R. H. Connell, agent of the Ocean Steamship Company.

Q. Had you hired Mr. Newlander?

A. I met him in New York in June.

Q. Was that the time you engaged him to come down there?

A. I did not engage him to come down there.

780 Q. Did you know before he reached New York that he was coming with this shipment of men?

A. Probably a few days before.

Q. Did you know that he had anything to do with the bringing of that particular crowd that he came down with?

A. Do you mean did I know that he would accompany them?

Q. Yes, sir.

A. Probably a week before.

Q. And you knew that he was going and looking up this class of labor?

A. I knew that he was—

Q. Did you know that he had anything to do with the labor?

A. Yes, sir.

Q. You knew then that he was getting up this class of labor?

A. It was not his duty to get it up.

Q. That is not the question. Answer the question. Did you know that he was coming and had anything to do with the bringing of that crowd?

A. If he had anything to do with bringing—

Q. If he had any instructions from the company?

A. He was to accompany that crowd.

Q. Then he was carrying out the instructions or directions or understanding with him from the Jackson Lumber Company, was he not?

A. No.

Q. He had no instructions?

A. No, not from the Jackson Lumber Company to bring these men there.

Q. Did he have from you?

A. He had instructions to accompany them or that he

could come along with them if he wanted to. It was perfectly voluntary on his part. He was not under contract or hire or anything of that kind to
731 come to Lockhart, but it was with the understanding that if he wanted to come down he could accompany them.

Q. You knew there was men coming down?

A. Yes, sir.

Q. Did you know that from him?

A. No, I think I got the information from Mr. Connell of the Ocean Steamship Company.

Q. Now, Mr. Harlan, you say that at the time Krum and Barsoda left there each—which—did both leave about the same time?

A. No, I think Barsoda left first.

Q. That was the fellow that carried off the sheets and pillow slips?

Q. You are speaking about two instances. Barsoda went away and returned, was arrested and returned, then the contract was taken from Barsoda. He probably stayed a week or ten days after the contract was taken from him and then he left of his own free will owing me fifty-eight dollars.

Q. He has been gone ever since?

A. Yes, sir.

Q. I am talking about the time he was brought back, at the time he was arrested down at Florala—you had him arrested then because he had gone off without paying for some slips and bed sheets, was that?

A. He had taken some bed sheets and slips and some cutlery and one thing and another that he could pack in a trunk.

Q. Didn't you know that he was no count?

A. I did not know so much about him as I did afterwards.

Q. Then after what you have told about him here about being no count—

A. You misunderstood me about that. Krum was the most no account man of the two.

732 Q. There was some reason for bringing Barsoda back notwithstanding the reason for which you discharged him?

A. I did not bring Barsoda back.

Q. You went down there at the time he was arrested on this affidavit?

A. Yes, sir.

Q. And had a trial?

A. Yes, sir.

Q. And he was discharged?

A. The record shows here; I cannot tell you.

Q. Now, it was the next day that you had him arrested on another charge—the very next day?

A. That is right.

Q. Now, that next charge was for beating his transportation, was it not?

A. I do not know. Our lawyer had it in charge.

Q. Do you know—do you make affidavits without knowing what you are doing?

A. I say that the lawyer prepared the charge.

Q. Didn't you read it before you signed it?

A. I probably did.

Q. Then you are testifying about what you know?

A. I come pretty near knowing about what I am testifying to when I am testifying at any time.

Q. I asked you if it was not the very next day you made the next affidavit?

A. No, sir.

Q. How long afterwards?

A. After he was discharged by the Court.

Q. And you failed to make out your case against him for stealing?

A. You want to know how long after the first charge was dismissed?

733 Q. Yes, sir.

A. It was probably a half hour.

Q. What was done with him under that charge?

A. I think he was found guilty; I do not remember.

Q. Did you actually have any trial under that charge?

A. I think he plead guilty.

Q. No testimony taken, no witnesses sworn—had you prior to his pleading guilty to that entered into an agreement with Barsoda by which he could be held?

A. No, sir.

Q. What did you charge for the costs in the first case?

A. I do not think there were any charges.

Q. Was he not required in the contract to settle all of the costs and expenses?

A. He was not.

Q. Have you got that contract with you?

A. I leave that for my lawyers to answer.

Q. You have it in your possession. That paper shows the whole contract with Barsoda, does it not?

A. Yes, sir.

Q. That paper would show exactly what he contracted to pay back?

A. It would show the amount. It would not show it itemized.

Q. Well, now, Mr. Harlan, on your direct examination you gave us to understaind that this man was no count. How long had he been working?

A. You misunderstood me about Barsoda.

Q. I do not think I am very far wrong.

A. Barsoda was not much of a man, but then Krum—

Q. How long had he been working for the Jackson Lumber Company before he walked off with the sheets and pillow slips?

A. I do not think he had been there over two or three weeks.

734 Q. He had been working under your observation?

A. Yes, sir.

Q. Now, you could not hold him under the first affidavit therefore you preferred another one against him. Now, if you say he was such a no-count man why would you go to so much cost and so much expense on his account?

A. I won't argue the question with you.

Q. Well, there is no question about Krum being no-count?

A. No, sir.

Q. How long had he been working with you before he escaped?

A. Did Krum escape?

Q. He was arrested.

A. No, he was not arrested.

Q. What sort of a trial—what did you have him before Johnson for?

A. Krum laid around and would not work and the hotel keeper insisted upon doing something—

Q. You have got an affidavit against Krum; did you charge him with laziness or what?

A. I could not have charged him with too much. This warrant or affidavit against Krum was transportation and board.

Q. He is not charged with not working?

A. No, sir. This affidavit covers his transportation and $13.30 board.

Q. His transportation is how much. How much did he owe for his transportation?

A. I think eighteen dollars.

Q. Were there any other expenses?

A. I could not answer.

Q. That eighteen dollars did not cover the entire transportation?

A. Some of the laborers that came down first we charged twenty dollars because there was two dollars more fare.

Q. You do not know whether he is one of the
735 kind or not?

A. No, he was not.

Q. You do not know that two dollars was charged in addition to the eighteen dollars transportation for agents' fees?

A. Here is the way we figure. The agents are in New York. It was sixteen dollars fare and two dollars agents' fees and two dollars to feed the men on the way down.

Q. Now, what did his contract call for after you took him out of jail?

A. It was the usual form of contract—he would work for one dollar and thirty-five cents per day so long—

But defendants' counsel did then and there object to the witness stating contents of the contract upon the ground that the contract itself was the best evidence. But the said judge did then and there overrule the said objection. To which ruling of the Court defendants' counsel did then and there except.

Q. Now tell us—you started there—you say the contract was after the regular form?

A. No, after I say after a regular form drawn by an attorney.

Q. You had had several kinds of contracts?

A. No, sir. I had two contracts.

Q. Did you have one for Barsoda?

A. One for Barsoda and one for Krum are all that I ever knew anything about and the attorney drew up both.

Q. He was to work for one dollar and thirty-five cents?

A. Yes, sir.

Q. Did that include board?

A. No, sir.

Q. What conditions was there about how long he was to stay?

A. As long as he was satisfied and I was satisfied with him.

Q. No particular term stipulated in the contract?

736 A. Not that I recollect.

Q. Nothing said about six months?

A. No, sir.

Q. How was he to conduct himself?

A. I cannot recollect the terms further than that it was drawn up by a lawyer and I doubt whether it was ever signed by myself.

Q. You have both contracts?

A. I have three of them in a roll of paper.

Q. You say these incidents with Krum and Barsoda were about the sixteenth and fifteenth of August was it not?

A. I would have to look to see. The fifteenth and sixteenth of August.

Q. You say you were advised by your lawyer that you could do that. Then Mr. Brassell advised you that you had a right to arrest a man on that charge?

A. No, he did not advise me that. When I have a case I turn it over to a lawyer up there and they attend to it for me.

Q. You informed him of the nature of the case?

A. Yes, sir; and he drew up the papers for us.

Q. Do you know at the time Gallagher and Sandor were brought down here on the charge of peonage?

A. I heard of it; yes, sir.

Q. Do you know about what date that was?

A. No, I could not tell you only from reference.

Q. Were you not here before the conclusion of the examination?

A. I was at Saint Louis.

Q. Didn't you arrive here when they were investigating that case?

A. Yes, sir.

737 Q. Don't you know that it was early in August or the latter part of July?

A. I think it was about the first of August.

Q. Then you knew what kind, that is the general charge against these men at the time these proceedings were taken out against Krum and Barsoda—you had been down here and heard a part of the examination?

A. Yes, sir; but I did not have any lawyers that knew as much about the case as some that is on it now probably to advise me differently.

Q. Now, Mr. Harlan, you said on your direct examination before dinner that you had never heard of any of these men running away—leaving their accounts, and you had never heard of anybody bringing them back?

A. You won't find that because I knew of lots of them being there that were never apprehended.

Q. Can you recollect of a single instance of any being brought except the case of the telegram?

A. I do not know whether they were brought back.

Q. You had some correspondence with Frank Mays, the editor here?

A. Yes, sir.

Q. Did you see—you read those articles in the Journal?

A. I do not know that I did.

Q. What called forth that remarkable letter of yours to the Journal?

A. I read the first articles.

Q. You were prompted to write that letter were you not by what you had seen in the paper?

A. I suppose that was the reason I wrote it.

Q. Now up to that time you had held nobody you say—you testified here to-day that you never held anybody at all except in contract with you? 738

Q. What is that—I did not testify that way.

Q. What did you say about holding people?

A. I did not say anything about holding people.

Q. Did you say anything about holding people in your letter to Mr. Mays?

A. I think there was something there, but if you take the letter—you want to understand that a man in his correspondence writes a whole letter to convey a certain thought and you take and pick a letter to pieces you can get almost anything out of it that you want to.

Q. Didn't you see the letter here in the Journal?

A. I cannot say that I ever did.

Q. You wrote it to the newspaper man and didn't you expect at that time that it would be published?

A. I have got more on my mind than to try to keep up with the newspapers.

Q. Are you a regular subscriber to that paper since then?

A. No, sir.

Q. You say in that, all the men that hired to us in New York signed contracts and fully understood everything and we are carrying out our part of the contract to the letter. These men they kept trying to escape after they were here?

A. I could have gone further and said they did escape.

Q. And you go further and say this. We have detained no one against his will or contract. Now, does that not imply—didn't you mean what you said—that you held no one against his contract? How is that?

A. I did not say that.

Q. Against his will or against his contract?

A. I said we held no one here against his will 739 and contract.

Q. Then explain what they were escaping from?

A. I do not know that they were escaping. I do not know whether you would call it escaping or deserting—just leaving their jobs.

Q. You used the term escaping?

A. Probably it would have softened it a little and been better in the lawyers' eyes or explained the situation a little better to have used the word deserting.

Q. Would it not have softened the prosecution?

A. I do not know as I am looking for any soft spots to ride in. I am looking for the truth to come out.

Q. This letter was written before you ever had any idea there would be any investigation?

A. Was that letter not an invitation to send any kind of investigators up to see what was going on at the camp? I do not see how I could have been freer, how I could have opened the doors any wider. How could I have written a letter any better than that to come up and investigate for themselves rather than to take the testimony of a few hoodlums coming down here.

Q. It was these hoodlums that were escaping, I guess?

A. There was not any working men that went away.

Q. Why were they brought back if they were worthless hoodlums?

A. I do not know that any got brought back.

Q. Why was the no account class brought back?

A. I do not know—

Q. You had nothing to do with the Krum and Barsoda—

A. I explained the matter of Barsoda a while ago. Krum came over of his own free will—the contract—I did not bring him back. The last I saw of either of those men they were in Florala and I did not see them again.

Q. You did not leave them until after they 740 signed the contract to go back?

A. Yes, sir; but I did not have them in the hands of anybody to bring them back.

Q. What became of this man White?

A. He is still on the pay roll.

Q. Now had you heard about this Fort Valley incident that you merely referred to in your direct examination at the time you wrote this letter to Mr. Mays?

A. I do not think that particular incident—I do not remember that. I remember of Mr. Gallagher speaking one time about two men that left him at Fort Valley.

Q. All you knew about the conditions in camp was what you read in the Pensacola paper—that was the first information you had of it was it?

A. Well, you draw my conclusions so far as a great many of the cases are concerned. I do not know what you understand—

Q. I am asking you to state—didn't you say something about information came to you about these conditions—you did not know anything about what Gallagher was doing until you read it in the papers?

A. No, sir.

Q. What did you know—I want to know whether you knew that Gallagher and Grace brought Mihaley back?

A. You want to know whether I knew that Gallagher brought Mihaley?

Q. Yes, sir?

A. I do not know.

Q. Did you know of his bringing back two unknown persons?

741 A. No, sir. I knew that Mihaley was back.

Q. Tell us how you came to know that?

A. Because Mr. Gallagher stopped at my house. There was a salesman there and I wanted him to stay in and talk to this party and I and he stopped at my house.

Q. Did he tell you where he found Mihaley?

A. I do not think his name was mentioned.

Q. Did he tell you that he brought back a man but did not know who it was?

A. No, sir; but I afterwards learned of this circumstance and this was the night.

Q. You did not learn it from Mr. Gallagher?

A. No, sir; I do not think so.

Q. Do you know where you were on the nineteenth of July, late in the afternoon?

A. Is that the night Mihaley was brought back?

Q. I am asking you where you were?

A. You can search me. I do not know because I have nothing—

Q. If you did not learn of the Mihaley incident from Mr. Gallagher, who did you learn it from?

A. From somebody else. There were several people around there that I could have heard it from.

Q. Did you hear the whole of it?

A. Never until I came down to this trial.

Q. You did not hear that he had been hit and buggy-whipped in front of the office near the store? Now do you remember any other one that was brought back and carried to you by an interpreter that desired to be changed from one employment to another that had run away?

A. What was his name?

742 Q. I am just simply asking you whether you remember?

A. There never was any man brought back and carried to me.

Q. Say about the middle of July do you remember any man brought to you by one of your interpreters there?

A. Neither Mr. Sandor nor Mr. Newlander ever braught a man to me in July or any other time.

Q. You were never approached by any one who desired to see you to ask a change of employment?

A. I never was approached by any foreigner that ever ran away that wanted a change of employment.

Q. You remember pretty well the incident of this man carrying you the telegram from Atwell?

A. I remember it like any other business incident.

Q. You were on the lumber yard?

A. At the saw mill.

Q. You saw that telegram this morning and had your memory refreshed?

A. Yes, sir.

Q. Now, you say you did not tell that young man to take that telegram back to Sandor and tell him what to say—you did not tell him what to tell Sandor to answer?

A. I say I did not tell him what to tell Sandor to answer.

Q. Are you clear on that?

A. I am perfectly clear on that for many reasons.

Q. Have you expressed those reasons to that young man since he was down here and testified in Court?

A. I expect I have same [some], as he expressed his reasons he would quit because he got discharged.

Q. What was your manner when you expressed those reasons?

A. Just like it is now with you.

743 Q. Was not your manner very abusive and overbearing?

Q. No, sir. I have never talked to a man as rough in my life as you have talked to the witnesses on the stand.

Q. You swear to it?

A. I do.

Q. Had you anything against the young man before he came down?

A. No.

Q. Had he been a faithful employee?

A. Well, yes.

Q. Had you ever made any complaint of him before about anything?

A. No, I do not remember as I ever did.

Q. Do you read that Florala paper?

A. Yes, pretty often. I cannot say that I read it all the time.

Q. That is published within a mile of Lockhart?

A. Mile and a half.

Q. That gives the local news once a week. Ain't you a subscriber to the paper?

A. It comes around the office.

Q. Are you a subscriber?

A. I think the company is.

Q. How long has it been such?

A. Ever since it has been published.

Q. Was it published when you went there?

A. You mean four years ago?

Q. Was the paper published ever since you have been there?

A. Shortly after we started there.

Q. Hadn't you read this in the Florala News before you saw this in the Pensacola paper in July (handing paper to witness)? See whether that came to your attention?

A. I cannot remember of seeing this.

Q. You never saw that in July?

744 A. I would not swear that I did not but I do not remember it. I do not think it has any bearing on the case anyhow.

Q. Do you know when this strange woman was up there?

A. Yes, very well.

Q. You had never heard of the Mihaley incident up to that time?

A. I think not. Well, was not the case tried down here before then? I either got it about that time or down here at the preliminary trial.

Q. Was Dr. Grace in your employ about the nineteenth of July?

A. Yes, sir.

Q. What was his business?

A. Veterinary surgeon.

Q. Did you make a written statement for this woman?

A. No, sir.

Q. You did not?

A. I did not.

Q. Were you interviewed by her?

A. Many times.

Q. How long was she up there?

A. She came to my office one morning and came back that night and went down to Laurel Hill and came back the next night and read me several letters and tried to give me testimony for the Labor Agency in New York and went so far as to say that if I would testify for the Labor Agencies she was satisfied everything was all right at our place. Then she got mad and said Mr. Gallagher was a drunken wretch and I kept him there for no purpose except to catch my men.

Q. Did she write you that?

A. I have got the correspondence here and can read it to the Court and jury.

745 Q. When she was up there and talked about these occurrences didn't you tell her you knew that Grace got the hounds to go after Mihaley out of your place?

A. No.

Q. You will swear that?

A. I will swear it because I did not know who keeps those hounds any more than you do.

Q. May be your memory was a little fresher then than now?

A. No, it was not any better then than now. If that woman insinuated that I told her that, she insinuated what was not true, and her insinuations have led us into more trouble than I have ever been in my life.

Q. Didn't you recognize her when she was here?

A. No, sir; I did not recognize her.

Re-Direct Examination.

Q. What woman is that?

A. She came to me under the name of Winterton. She has since turned out to be Mrs. Mary Quackenbosh.

Q. She came there as Grace Winterton?

A. As Miss Grace Winterton.

Q. And has since turned out to have another name?

A. Since turned out—she told me in her correspondence that she had another name.

Q. I think I asked you about whether you had ever given a pass to get out of there?

A. Never.

Q. Do you know anything about that transaction?

A. Nothing at all about it. I never heard of it until this young man got up here and testified about it.

746 Thereupon the defendants in order to maintain the issues in their behalf produced as a witness the defendant J. W. LAMATER, who having been duly sworn, testified as follows:

Direct Examination.

Q. Your name is J. W. Lamater?

A. Yes, sir.

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. Mr. Lamata, are you employed by the Jackson Lumber Company?

A. Yes, sir.

Q. How long have you been so employed?

A. About four and a half years.

Q. What has been your duties?

A. I have been superintendent of the turpentine department.

Q. As such superintendent did you work any of the foreigners out there?

A. Yes, sir.

Q. When did you begin working the foreigners?

A. They went to work about the thirteenth of July—possibly a few days before that.

Q. Did you ever know Mr. Newlander there anywhere as a boss?

A. No, sir.

Q. How far are the turpentine operations over which you have supervision from the logging camp?

A. One camp is right at the logging camp. The large turpentine camp that the foreigners were engaged at was between four and a half and five miles by the dirt road from the log camp. There are also three other camps.

Q. This man that testified here this morning, Mr. Parker, did he work at the camp at which the foreigners worked?

A. Yes, sir; he leased boxes at the same camp.
747 We did not have enough men and leased the boxes
and after the foreigners came we took back the
boxes and worked them with the foreigners.

Q. Did you have any connection with the logging business or the foreman or the bosses of the logging business in any way?

A. No, sir.

Q. Did they have any connection whatever with you?

A. No, sir.

Q. Was their business absolutely and entirely separate and independent?

A. Yes, sir.

Q. As distinct as if you were working for different employers?

A. Yes, sir.

Q. No connection of any kind?

A. No, sir.

Q. Was there ever any of the men that were working for you or under you whipped at any time?

A. None at all.

Q. Was there ever any men working under you held against his [their] will?

A. No, sir.

Q. Was ever any man brought back that ran away if any such did run away and put to work?

A. There was one man that was brought back or came back of his own accord and was pointed out to me afterwards, but as to his being brought back I do not know anything of it. He was pointed out to me as the man that came back.

Q. Did the men frequently leave or not?

A. Frequently; yes, sir. We had quite a lot of men leaving—in fact I had about forty men at one time and they got
down to about seventeen men and nobody ever thought of
going after them because they were really more ex-
748 pense than anything else at the turpentine camp
and I was simply keeping them until there was an
opening at other places.

Q. There was no inclination to hold anybody that wanted to go?

A. No, sir.

Q. Could you use them—if they did not want to stay there could you keep guard over them like convicts?

A. No, sir; we had no way to keep guard over them.

They went and came from their work themselves and it would have been almost impossible to have guarded them unless we had built a stockade.

Q. Was there ever by intimidation or anything like that any other effort to influence by intimidation any of these men to remain there?

A. No, sir.

Q. Did you ever have any arrested and brought back?

A. No, sir.

Q. Did you ever have any connection with anybody who ever did arrest and bring back a man?

A. No, sir.

Q. You heard this man Dunkey testify here the other day about your going out in the woods and getting two men and bringing them back?

A. Yes, sir; I went.

Q. State the details of that case to the jury?

A. I went and got those two men, but he is very much mistaken about their running away. In fact I told the men before dinner and also an Austrian and two Spaniards that I wanted them to go to the house at dinner time and get their clothes and things and get ready to go to the mill. A crowd went that night to the mill. They had spoken to me in the morning—that was the first morning, and I told them to try the work and if they did not like the work could 749 use some of them at the mill. Out of the crowd of thirty-five at dinner time I told them to go to the shanty and get their clothes ready and sent the wagon to the barn and took them down to the mill, and that is where I got the men, right at the houses not more than one hundred yards away from the camp.

Q. Out at the turpentine camp there are various houses they stay in?

A. Yes, sir; in seven houses.

Q. And these men wanted to go as I understand

A. Wanted to work at the mill—not at the turpentine camp and—

Q. And you told them they could get their things and go to the mill and the wagon would be up at the house and take them?

A. Yes, sir.

Q. Did all bring their things to the house?

A. No, not all. I went down and told them again. Some one went with me because I was afraid they had not understood what I meant. I think it was Mr. Sandor.

Q. Do you know whether those dogs were brought into the camps there?

A. Those dogs were brought there at my suggestion I believe. I had—one afternoon I had five negroes killed in a drunken row and the ones who did most of the shooting got away and I telegraphed Andalusia and could not get any dogs to run them down and had no deputy sheriff nearer than Andalusia twenty-six miles away and we could not find them. The good negroes on the place there with me the quiet and respectable men with families all said as long as it was not stopped they would not work for us any longer and we had possibly two hundred men at the time and had to keep down lawlessness in some way and I went to Mr. Harlan and asked him to get the dogs for the purpose of stopping all this kill- 750 ing and stealing and things of that kind that was going on around there. We had to do it ourselves as the county did not furnish any officers for that section at that time.

Q. You had no officers there and those who were honest and wanted to work and who were willing to live peaceably and quietly advised you that they would not stay unless they were protected in some way?

A. Yes, sir.

Q. You could not keep your labor in that lawless gang of men unless you did something to protect them?

A. No, sir.

Q. When was it the dogs were brought there?

A. The dogs were brought there—I do not remember just when—over a year—may be a year and a half ago.

Q. Now, these foreigners that were brought there—how were they among themselves?

A. Among themselves a majority of them were quiet. A few very quarrelsome and all the time fussing, but they did not give us a great deal of trouble except among themselves. Some of them I believe stole a few things from some of their own number and some of their own number punished them for it and took the things away from them.

Q. Did you say to Mr. Harlan that unless you got some protection for the men there that you would quit him—if he did not get some dogs or do something?

A. I did.

Q. You have never been present when any man was whipped?

A. No, sir.

Q. You have never been anywhere when any man was brought back?

A. No, sir.

Q. You never had any connection with bringing anybody back?

A. No, sir.

751 Question by Juror:

Q. About the dogs and protection and about quitting, you told him that when those negroes were killed?

A. Yes, sir; possible two or three weeks afterwards.

By Defendant's Attorney:

Q. Did you come down on the boat when Maginnis did?

A. No, sir; I did not come down on the boat. I went to Savannah and met the crowd that Maginnis came with.

Q. Do you know what kind of a character Maginnis was for peace and quietude?

A. Maginnis was a very bad character. In fact he stole things several times on the way down and was an all round trouble maker on the train.

Q. Kind of a bully?

A. Yes, sir.

Cross Examination.

Q. You say you went and got these men for the purpose of taking them down to the saw mill?

A. I went and got the cook to notify them to come to the cook camp for their clothes and to take the wagon and go to the mill.

Q. Where were they when you noticed them?

A. In the houses—I do not know whether they were in the houses or not.

Q. What time of day was that?

A. Dinner time.

Q. How far was the house from the cook house?

A. One hundred yards I should judge—may be not that far.

752 Q. Where did they get their dinner?

A. At the cook camp.

Q. Were you there at dinner time?

A. I think I was.

Q. Were they there at dinner time?

A. Yes, sir.

Q. Now you say these dogs got there at your suggestion. Do you remember the time they were procured?

A. A year or a little over a year. They have been there for quite awhile—a year at least if not longer.

Q. You say there are no officers nearer than Andalusia?

A. Not at that time except a constable at Florala with no power except in a certain beat.

Q. Were there any officers at Laurel Hill at that time?

A. I do not know anything about that. That was out of the state.

Q. How far is Eaurel [Laurel] Hill from Florala?

A. I really do not know.

Q. How far is it from the camp?

A. It is seven miles from the camp I stayed at at that time.

Q. You do not know whether there were any officers there at that time?

But defendants' counsel did then and there object to said question and move to strike out the testimony relating to officers in Florida because it is irrelevant and immaterial.

But said Judge did then and there overrule said motion and objection, to which ruling of the Court the defendants did then and there except.

Q. You were never present when any one was whipped up there? Did you know that whipping had been administered?

A. I heard of it.

Q. You say you were never present when any one was brought back? 753

A. No, sir.

Q. Did you know that people had been brought back?

A. I had heard of it.

Q. Now, you say that at your camp no one was ever—no one ever ran away or was brought back except one man and he went away of his own accord and came back so far as you know?

A. I do not think I said that. I think that I said I did not know of any one being brought back except that I heard a man was brought back and that he was pointed out to me several days after he was supposed to come back. How he was brought back or anything of that kind I did not know a thing about it until the details were given here in Court last week.

Q. Was there a man there by the name of Sam at your camp, one of the laborers?

A. There was Sam Albert a negro, that is the only Sam I know of. There was Sam Clifford another negro, a teamster.

Q. Do you remember on one occasion having chased a man with your revolver by the name of Sam and compelled him to work?

A. No, sir.

Q. During last summer?

A. No, sir.

Q. You have no recollection of that?

A. No, sir; I have no recollection of chasing anybody.

Q. Did you run him out of the house and cause him to jump out of a window?

A. No.

Q. You are acquainted with—I believe you said you were the foreman or the man in charge of the turpentine camp?

A. Yes, sir.

754 Q. Are you acquainted with the other employees who are foremen and bosses, Mr. Bellinger, Mr. Gallagher and others?

A. Yes, sir.

Q. State whether or not you carried a revolver?

A. I did.

Q. Did the foremen carry revolvers?

A. I could not say. At times I have seen them but whether they carried them regularly or not I do not know.

Q. Didn't you testify here two weeks ago?

A. Yes, sir.

Q. Didn't you testify it was the custom to carry revolvers?

A. I said it was the custom for me to carry a revolver, but as for me saying it was customary for them I did not. I do not know what they carried all the time, but I have seen them with revolvers at times.

Q. As I understood you had about forty men of these foreigners working for you during the summer?

A. If I was to add up the different number that same there there would have been about forty. I do not believe that at any one time there was ever over twenty that worked. There might have been twenty-five.

Q. These were foreigners?

A. Yes, sir.

Q. Did you discharge those men—the men that did not work?

A. We discharged several that did not work; yes, sir.

Q. Didn't you state that some went away?

A. I said they left—that is all I know.

Q. And I believe you said you were glad they went away?

A. Yes, sir.

Q. And no effort was made to bring any back except this one you referred to, and you knew nothing about his being brought back?

755 A. Yes, sir.

Q. You heard that he was brought back to camp?

A. Yes, sir.

Q. Was this man brought back a foreigner?

A. Yes, sir; Rudolph Laninger was his name.

Q. Was he indebted to the company?

A. Yes, sir.

Re-Direct Examination.

Q. Is that the name (pointing out name in indictment)?

A. Yes, sir.

Q. Is that the man?

A. Yes, sir.

Q. You say that you heard of some whipping?

A. I heard of it through the newspapers and heard it talked about after the newspaper reports came out among different people.

Q. Did you hear who did any of this whipping that you speak of?

A. I think that I—I thought at the time that I knew who the whipping spoken of referred to—it referred as I thought to whippings I knew had been done by the men themselves.

Q. The laborers themselves?

A. Yes, sir; and I still think so. I still think the reference was made to them.

Q. Why did you carry a pistol, Mr. Lamata?

A. I carried a pistol because a great many times I carried sums of money about me—sometimes twenty-five hundred or three thousand dollars—pay roll—from one camp to another to pay off men and I almost invariably had one hundred dollars in my pocket Anybodv that knows anything about this class of men knows that they come to the boss man
756 and ask for a loan at any time—it does not make any
difference what day—they have no special time for loans. Very frequently you run across a man that wants to move and you have to pay an account or suppose to pay it and we taken money and send right on after him, or something

like that. I always carry close to a hundred dollars on me.

Q. And you carried a pistol for your own protection?

A. Yes, sir; not only as a protetcion for the money but as a protection to myself. I have had use for it at times.

Q. Was the character of the men that you were working out there such as to lead you to believe it was necessary?

A. Yes, sir. We have had and still have quite a number of dead beats and gamblers who work three or four days in the week and the rest of the week they gamble and shoot and do everything they can if not under control and it is known by every man who works that class of men that if they let them get the control of the place you might just as well turn the business over to them. If you give them an inch they will take a mile and come right straight and take charge of everything whether it concerns them or not and for that reason we generally carry a gun to protect ourselves.

Q. They are a rowdy boisterous class?

A. Yes, sir.

Q. Have you ever had any experience that made you feel that it was necessary to have a pistol to protect yourself?

A. Yes, sir; I have. Besides the two instances related at the last trial there was a man that came into the commissary one night—in fact one of these foreigners—I do not remember his name and my recollection is called to my memory by one of the clerks in the commissary—he came to the commissary and I was standing by the desk looking at a letter and he came there and asked me something and I could not understand what he said and I said what do you want and 757 another fellow spoke up and says for you to give him five dollars—and I says what do I want to give him five dollars for—that man was working for Mr. Gallagher, and he pulled out a little trap of a gun and I do not know what he thought but I did not do anything at all but just turned around and pulled my gun and laid it on the man told him to get out of there. I do not know what the man would have done or attempted to do, but in my opinion he thought that he could get five dollars out of the cash drawer by demanding it.

Q. Did you carry that gun before you went to work with these foreign workmen?

A. Yes, sir.

Q. Did you have any one watching over these men at night?

A. No, sir.

Q. Nobody to watch them at all?

A. No, sir.

Q. Did you have anybody to watch the property?

A. No, sir; nothing except the houses to watch.

Q. There was no property at the turpentine camps to watch and you kept no watchman?

A. No, sir.

Q. They slept absolutely without any guard, watchman or anything and went and came as they pleased?

A. Yes, sir.

Re-Cross Examination.

Q. This remarkable occurrence of this foreigner was not remembered when you testified before?

A. No, sir; I did not recollect, and I did not think of it at all—only the boy in the commissary reminded me of it.

Q. What did you think of it at the time?

758 A. I thought the man must be a fool or something. He had a little dollar and a half pistol up there and expected to bluff anybody with it.

Q. You did not think enough of it at the time to say anything about it or report it to any one. All in the world you did was to lay your revolver out on the counter?

A. I brought my revolver on the man and he put his back in his pocket. I am not sure but—

Q. Did you remember any of these occurrences that you testified before whether you absolutely carried a gun?

A. Yes, sir.

Q. Did you say anything about it?

A. I really could not say.

Q. Don't look at those men?

A. I am not looking at the men and you do not think I am looking at them.

Q. State whether you testified to any of these occurrences—

A. I testified as to carrying my pistol on two occasions when men had demanded money and did not get it because I had the gun.

Q. Didn't you give as a reason for carrying a pistol that these were dangerous men and the reasons for the foremen carrying pistols was because they were out among the men?

A. I did not give you any reason for any other foreman or anybody except myself.

Q. What are you carrying bills of money around in the wods for?

A. I explained why. I am not always in the woods. We have five different quarters and I am at the office at times

and the commissary and any time almost I see a negro generally out of camp one or two wants money or knows a friend of his who wants to move and owes an account at a
759 place or something of that kind and we attend to it right there instead of driving five or ten miles for it.

Q. So you do not carry money out in the woods with you?

A. I certainly do. My business is through the woods.

Q. Do you pay up your men in the woods?

A. I do. I pay off my men in the woods.

Q. Don't the men come to the camp for money?

A. The camp is in the woods.

A. I understand when you go out in the woods you carry your revolver. Do you carry it in your pocket at the camp?

A. I generally carry it around the house and everywhere else. Very seldom I take it off of my person.

Q. And the only use you have ever had for it was on these particular occasions two or three times you say you have—

A. The times I have used it. The fact that I had it has kept me from having use for it many times.

Q. Do you know of any particular use that Gallagher made of his?

A. I do not know. I do not know anything about Mr. Gallagher's except that I have seen it on him.

Q. You have never heard of Gallagher using it on two foreigners?

A. No, sir.

Q. You have never heard of the Mihaley incident—the arrest of the man down in the Paul neighborhood?

A. From the newspapers; yes, sir.

Q. You never heard of it before?

A. No, sir.

Q. Did you read the articles in the newspapers about this beating?

But counsel for the defendants did then and there object to the said question because it is not in cross of anything asked the witness and because it is irrelevant and immaterial.

760 But said Judge did then and there overrule such objection. To which ruling of the Court defendants did then and there except.

Q. You were talking about a whipping you heard in camps. You said the whipping was done by some of the men in camp—

A. I said that was still my opinion and was my opinion at the time.

Q. And your information about this whipping you got from the newspapers?

A. Yes, sir.

Q. Did you read the Pensacola paper—that is the paper you got it from?

A. I really could not say what paper I got it from.

Q. Did you ever see that article (exhibiting to witness copy of newspaper)?

A. I do not think I have ever seen that report before.

Thereupon the defendants to further maintain the issues in their behalf produced and had sworn the defendant ROBERT GALLAGHER, who testified as follows:

Direct Examination.

Q. You are one of the defendants in this case?

A. I am.

Q. What nationality are you?

A. I was born in Canada.

Q. You are an Irishman?

A. Irish descent.

Q. You have heard the testimony of the witnesses in this case and I want you to state if you can each one of these transactions here enumertated here and state the facts all the way through? 761

A. State when I went with the Jackson Lumber Company?

Q. State when you first became connected with these foreigners?

Q. You are working for the Jackson Lumber Company?

A. Yes, sir.

Q. How long have you been working for them?

A. I first came there on the nineteenth of August three years ago—the first time I ever met Mr. Harlan.

Q. Are you in charge of a department or work bosses?

A. I am logging superintendent.

Q. Do you have any connection with the other superintendents whatever?

A. No, sir.

Q. Do they have any connection with you?

A. No, sir.

Q. You have no connection with Lamata?

A. No, sir.

Q. Nor with any of the other departments?

A. No more than if he was working for some person over in Ga.

Q. And he has no more to do with your work than if he was employed by somebody else?

A. No, sir. I came to Lockhart three years ago and engaged with Mr. Harlan. I remember one very particular remark he made that the logging department was up to me to go ahead and get the logs.

Q. Just tell the jury the extent of the employment, what it is so they may distinguish it from the other departments?

A. I have the job of putting logs into the boom—charge of everything in the woods. I have five departments, five separate departments in my business. I have skidding, that is
one department, and have got a foreman for that.
762 Mr. Bellinger looks after that part of it. Sawing,
Charles Collins looks after that department. Road,
Mr. Bellinger he looks after it—no particular foreman. Railroad—that is train, cars and such as that that carry logs in—I looked after that or Mr. Bellinger. Railroad spurs or that is building of tracks in the woods, I have several different foremen—sometimes got only one or two and sometimes have as high as four taking up track and relaying.

Q. Who has charge of that?

A. At present have got a couple of men over colored men. His name is—in fact I do not know who is in charge of it—I have been away three or four weeks and I do not know who has got charge of it at the present time. Well, something like a year ago I think it was about the Fourth of July I had been bringing men down here or rather they had been coming down to the Jackson Lumber Company—I was with O. D. L. for twelve years and a great many of my old hands that came down at times and I would send them transportation and a year ago last July we talked something of going north and getting some Swedish laborers and I went to Chicago about the Fourth of July—there had been an agent there who sent me word that he could get me laborers—that is Swedish nationaliy—Swedes and Finns and when I got there he had a lot of Hottentot paupers trying to ship them off on me and I would not accept them and came back. In April I think Mr. Harlan had some correspondence with a man by the name of Swartz in New York and he said he could furnish sixty men on a certain day—I do not remember I think it was some

time about the sixth of May that I went on to New York after those laborers and when I got there Swartz wanted to employ them and I went down to the Old Dominion Line, McDonald's office and deposited something over twelve hundred dollars—I did not want to have any foolishness
763 about it. Well, I think I was to leave there on a certain day and Swartz sent down some men and I would not accept them. Well, then on Thursday after I kind of did not expect the sixty men but I wanted my deposit back again and he of course wanted his percentage out of it, but on a certain day he sent down I think forty-three men and so I told him I would go with forty-five men and sent down forty-three men and when we got to the dock I picked out twenty-seven out of the forty-three. I picked out twenty-five and took twenty-seven and the others I would not have and when we got to Norfolk, West Virginia, I went up town and those fellows stayed in the sheds at the wharf and when I came back two of them was gone and I had transportation for twenty-seven and I immediately picked up two more men to fill out the transportation. I came—that was in May, I think we got in there—I am not positive of the date but I think about the eighteenth of May we got in there. After we got in there that night at supper there was the next morning one of the crowd had left—took French leave—and left between two suns and the next morning all those people were at work. They were pretty good workers—I did not have any trouble with that crowd at all whatever—all pretty good honest fellows.

Q. What were they?

A. There were some Germans a few Hungarians and some Swedes.

Q. And that was the particular crowd that came down on what day?

A. Between the eighteenth—around that I am not positive—somewhere between the fifteenth and the twentieth of May—that was the first lot that came.

Q. How about the second lot?

A. I left there then on the second of June and went north on a vacation and went up to Chicago, down around through Canada and to New York. I got to New York
764 on the thirteenth or the fourteenth of June and I met Mr. Harlan there a few days afterwards and picked up—we had made arrangements with some agents thereto—I went around to the different ones and on Saturday we went down to the Ocean Steamship Line and the employ-

ment agency had a small crowd of men down there and they did not suit and we would not take them then. On Tuesday I went over to the Old Dominion Line and I think we got twenty-seven men there and I went with these twenty-seven men—it was a pretty good crowd of men I did not have any trouble with them on the way down and I took them along.

Q. What did they consist of?

A. We had a few Hungarians and Germans.

Q. When did they arrive?

A. We got into Lockhart I think it was on the twenty-first of June.

Q. What were they put at?

A. They went to work on the railroad principally; some went to the mill; if they wanted to go to the mill they went to the mill.

Q Some went to cutting down trees?

A. Yes, sir; they were distributed around generally.

Q. When did the next lot come?

A. On Saturday the twenty-third of June I went to Savannah to meet a bunch that was coming down. They got into Savannah on Sunday morning and that is the time the trouble commenced. I met them down at the boat and there was all kinds and I had a special car brought up to the dock and those fellows got on there.

Q. Is that the crowd that John Smith and—

A. That is the crowd that landed there.

Q. And that Maginnis was in?

A. They landed on the twenty-sixth of June.

765 Q. That is the crowd that John Smith came down in?

A. Yes, sir.

Q. Keller and Maginnis?

A. No, sir.

Q. John Smith—

A. There was a bunch of five, John Smith, Joe Davis, John Smith, and Louis Abraham—five Germans. Well, when we left Savannah the Savannah line was to furnish them a lunch and some of them commenced kicking about the lunch. I looked at the lunch and the meal was a very fair lunch but I did not really want to have the men eat it on the way—there was some things about it I did not like—the sausage—and I told them to throw it away and I wired ahead to Macon and had lunch put up there and we were making through to catch a train at Fort Valley but we were late and when we got to Fort Valley we missed

the train and when we got there I went up to the restaurant and got them all lunch, hot coffee and as good a meal as I could get there and when we came back down to the cars that was I think about five o'clock there was several people came down looking around and making inquiries where they were going and one thing and another and along about six o'clock when I saw a couple as I took them to be Jews making themselves very previous talking around there with those fellows and they kept talking and I sat back and did not have much to say but I could see those Jews were doing a lot of talking and there was a man with long whiskers. He was also present and another thing I want to state here about eight o'clock that night I went around to get a drink and when I came back nearly everything was gone. I inquired where the boys were and somebody throwed up their hands and said gone and I went out and had to size up the two Jews and I made some inquiries and they said the Jew had hired them to pack peaches and I commenced to look for an officer and started up town and inquired for an officer and
766 justice of the peace and when I got up there I met a man and asked him if he knew and he said yes his office is around there, so I met the officer and I inquired of him if he knew those two Jews and he said no. As I understand it there is a man got a peach farm here—the man with the long whiskers, and he has been down here inducing my labor away and I am taking these men through here under contract through the State of Georgia and I want to see this justice as I remember it was not long ago that a recruiting officer was fined. Well he said did they leave you. I says I do not care about their leaving me I am after the man that came down there and enticed them away. He says I can take them up for being vagrants if they have no money. I says I do not want them I says I am going to stay here until I see. I think we have got money enough to fight this thing through and prosecute those in there—

Counsel for government did then and there object to the rambling story being told by witnesses.

The Court:

The Court thinks he has finally come to something that is pertinent. He has been to Canada and all over the country, but he has at last gotten down now to where he ought to have started. If counsel can see what is coming and can steer their witness to the facts in the case it will save time. I do not want to interfere.

A. Well, I went back to the car and stayed in the car that night. I had been talking to Foster and sitting in the seat with him and after I got around to Fort Valley there I put my hand in there and got something bigger than my finger and I went down and got some stuff to kill them, and I went back to the car and laid down and about eleven o'clock I was woke up—it was somewhere between eleven and one o'clock I was woke up—and some one called me outside and I went out there and the man had a lantern there and says are 767 those your men, can you give me their names. I says no I do not know their names. He says are you sure they are your men and I says yes and he says why don't you know their names, have you got the contract. I says no because they went through by mail. He says I will lock them up. I says you can lock them up if you want to. He says I will see you again in the morning. Boys if you want to go in there and go to bed do so. The next morning about eight o'clock I was down on the corner and this officer came along and I started to laugh and said where have you been out on a little bunko party have you had a nice time on your bunko party. They said yes. He says and they are all willing to go back and want to go back and I took them in. I never said a word about them. I says do you want some breakfast and gave them the breakfast. Now that is the Fort Valley affair. I stayed in the car all night and the next day some one came down—I do not know whether they had any authority, and told me they was going to pull them for vagrants and I said go ahead. Now the boys stayed around there without any guards. I gave them money different times out of my own pocket to buy peaches and when they got filled up they came back down and started to playing among themselves—

Government's counsel again objected to the rambling story.

The Court:
I think the counsel can cut it short by some questions and save time even if the questions are a little leading it will be better.

Q. Mr. Gallagher, those men that were arrested there and brought back was there any effort to demand pay or anything like that for their return?

A. They were not arrested.

Q. They came back?

A. Yes, sir; not from me; no, sir.

Q. Did you go on through with them?

768 A. Went to Lockhart that night about twelve o'clock.

Q. When did you get to the log camps?

A. Got in the log camp about twelve.

Q. What sort men were those you brought out with you that time?

A. All kinds. Several Americans—New Yorkers.

Q. How did they compare with the other men you brought down?

A. They were a different class of people altogether—troublesome, quarrelsome, stealing, thieving.

Q. Quarreling among themselves you mean?

A. Yes, sir.

Q. Thieves?

A. Yes, sir.

Q. What did you put them at work at?

A. They went—a good many to sawing logs in the woods.

Q. When did Maginnis go there?

A. Maginnis got there in a different lot. I think along about the twenty-first of July—I do not just remember the date. There is another thing we have not got down there, the Bulgarian affair.

Q. The Bulgarian difficulty was before the Maginnis difficulty was it?

A. Yes, sir.

Q. Explain the Bulgarian difficulty—just how it arose and when?

A. On the next morning some of them asked me if I wanted them to go to work and I told them no, they could look around that day. I have never asked a man the first day he come there no matter where he came from if he traveled any distance to go to work—but to look around and go over the works the first day and I said boys in the morning—some could not talk English—I want you to go and look over the works and they went out different ways—I think those five
wanted to go down and take a bath and they went
769 down to a pool—I sent a nigger down with them
about a half a mile to show those boys. I was out
in the woods and came in about half past twelve—there was not room for everybody at the first table and there was a lot of fellows eating at the second table—in fact all at the second table when I came in from the woods and as I was passing the barn I went to the buggy and took my revolver out and put it in my pocket. It had been raining a little bit and my

umbrella was all wet and I came in and threw my revolver in the corner of the dining room on some chairs and the time keeper came in and I asked him if he got the names of all the fellows and he says I think there are two or three that I have not got. After dinner I got up and I put my revolver in my pocket something I do not very often do, and went down through the dining room opened up the screen door and a man was standing there and this Bulgarian was standing up on the platform at the time. This man after I got through with him I turned around and I let go that screen door and I asked him if the time keeper got your name and up went his hand. I asked him the second time. Then I took him by the arm—I did not have any gun it the other hand. I took him by the arm in that hand and opened up the screen door and shoved him inside. We had then—there was several of them that could not understand—did not know their names—and we gave them a little ticket about two inches square with their name on it as we got it, and after that if they wanted a check or wanted any tobacco or anything they would go up with the ticket and give it to the bookkeeper and he would have their name—

Q. Was the ticket to identify the party?

A. Yes, sir; because we ask them their names and they do not know.

Q. If they carried that check to the cashier they could identify the man as being the man whose name was on it?

A. Yes, sir. He kind of resisted and I pushed him inside of the door and I turned around—now I want to explain to you people about this desk first. As I came
770
in the door like here is the door you enter the car and there is a desk that stands right there and when I came in the door I went to get a ticket out of the bottom hole of the desk and he stood back and I turned down the lid to get the ticket and when I was about down here he gave me a shove—I do not know whether the man meant to shove me or went to get out and I went over on the corner of the door and it did not feel very good and I turned around and grabbed him by the collar and slapped him two or three times and I think I hit him once in the ribs and shoved him through a door and I says I will run you away from here and he was crying and I turned around and walked up—

Q. Had he ever run away?

A. No, sir; and I had never heard that he had attempted to run away until the day of the trial. In fact between ten and eleven o'clock I saw the man down through the woods. I remember him distinctly and there was another man with him at the time—the two of them together—

Q. Nobody had brought him back from anywhere?

A. No more than the other boys that came out of the woods.

Q. Did you kick him on the shin?

A. I never did. I got poisoned I expect the very morning—if you will let me I can show you scars I have got on my leg here that same morning. Excuse my dirty feet. (Witness here exhibits to jury scars on legs after pulling off shoes and socks.) I was as sore as this man and laid up in the car with sores on my legs—

Q. About the same time?

A. Through the month of July.

Q. From dew poison?

771 A. From dew poison and red bugs. Mine started with a big blister, several big blisters.

Q. What was the next transaction in order that came up? How about these boys? I believe they came in that crowd—Haas and Buckley?

Q. What do you know about these boys?

A. The next occurrence was Maginnis. I went to Lockhart to meet that crowd and came up on a flat car and when we got on the flat car I noticed Squarehead, his hair was cut across this way, cut right to the skin, a strip taken out and he had no hat on and I asked what had happened to that boy and some of the others made the remark that Maginnis had given him a hair cut. I do not remember but some one said I had better lookout—Lambert said Maginnis was looking for trouble and told me to look out for him. I went to the camp and they were all standing around there, about twenty-seven—I guess there was ten Bowery boys in that outfit and I went up along about I think we got in about five o'clock. I know I started for the car and those fellows were standing around the car and I started up for my car and my revolver happened to be up there and I got it and put it in my pocket and I marched down and when I was going by Maginnis says there is one of them Cracker bosses now, we will fix some of them fellows. So I went on up I looked at him but I did not say anything, but went on up to the car and got my gun and put it in my pocket and went back down there and he stopped me and asked me where he was going to sleep. I says in this car here. He says well I am not. I says that is the only place for you to sleep—kind of jollying with him in the first place. Well, he says, I have stood enough of this thing all the way down here and I

ain't going to stand for it any longer. I am going to sleep in that car up there. I do not know whether he meant
772 my car or the two cars above it but he says I am not
going to sleep in there with them dam Polarks. I am an American. I says bo here you sleep in there or we will know the reason why. He says we will. I says yes you will. He had on a coat at the time and took off the coat and his hat and threw it out to the bunch and says you God damn son of a bitch and squared up and came for me and I stepped back and about the time he brought up I reached over him and hit him with a slap alongside of the ear and he went over on the bench and he got up gaain and came back and he made a kick at me the second time and I hit him another here somewhere and he went over again and at the time I did not wait again I pulled my revolver and I intended to hit him but I did not I grabbed him by the neck and shoved him across the track and as he went across the track I helped him along and I did not put him on his nose and he says I will be good. I says you had better be good while you are around here for I will certainly attend to you if you do not. I turned around and fired three shots and turned around to the other fellows and said I have done everything I could for you and I says I will do everything I can, but you must remember that I am going to run this camp just as I want to and that was the last I had to do with Maginnis. The next morning he came up and told me his name.

Q. I do not know when this negro occurrence—

A. Well, now, this negro John Malone he had worked for us about I think a year and a half ago and we had a horse there that came in one day cut with an axe and some of the other negroes reported that John Malone had cut this horse with an axe intentionally. We could not get down to the thing then or I would have punished Malone then but I requested Mr. Bellinger to discharge him and he went away and when he were short of laborers last summer he
773 worked in again in the sawing department and got in
again. Well, I come along there one day and an old negro that had been with me a long time, Dave Williams, he had his head tied up and his had [hand] tied up and I says what is the matter and he says John Malone hit me with an axe. I said what did he do that for and he says he blames me all the time for telling you he cut the horse. I wanted to send out for Malone then but I did not—something turned up and I did not see Malone until the next day and then I told the foreman—the time keeper not to give him aay work

at all—this was while we had this order in effect the train order about not letting any men go down on the train during work hours, and he laid around there all the forenoon playing sick and I understood he made the remark that he was going to ride in on that train and about half past twelve I was up at the barn and heard four whistles—those four whistles is a distress signal with us that is the engine is off the track or four long whistles something the matter. I was busy and did not pay any attention to it and thereupon a boy came up and told me that this negro had put—John Malone has put the brakesman and the engineer and the fireman out of the cab down there. Well I started off and got my revolver and I went down and saw Mack standing way back—I did not see the fireman—I saw the flagman and I says is—

Q. Was there any body in the cab when you got down there?

A. I saw the whole crew was on the side track and I says is this the nigger here and they said yes. I says you get back there and toat the mail. He run his hand in his pocket here and pulled a gun. I says nigger you get up there and get out. He started up and came along the cars and threw his dinner pail in and I says if you don't pick that up I will fill you full of lead. He run across the road—there is a little house there and he got hold of a club and come for me. I fired a shot—about the last thing in the gun and he come around
774 and he says God damn you I will kill you or you kill me. I says nigger I will kill you or you will kill me. He says I will go and get my gun and come back and kill you. With that I threw the gun into the kitchen and some one threw me out another revolver and I ran after him. I did not want to kill him but I wanted to run him away and I fired two or three shots to scare him away from there.

Q. Now, as to those boys who worked under Angelo. Did they come to you to give them different employment?

A. Yes, sir; at different times, because they would not work with anybody.

Q. Did you try them with the different bosses?

A. These boys, Haas worked in the dining room. He came to me and I changed him off and I would send him out with another foreman and he stayed around the camp two or three days and finally everybody worked him around there and he quit of his own accord and went down to Florala and he did not have any money and he came back. I remember one occasion his coming to me—in fact he had worked he had two or three times came to me to see if I could not get him a job and one Saturday night he came to me and told me that the boarding house man would not give him anything more to eat and he did not have any money and I told him to go out to the camp he wanted a job and I told him to go out to the camp and get something to eat and I will see you on Monday. He went out and on Monday I met him out there—I came up between the cars he was standing there and he asked me for a job and I says see Mr. Bellinger—

Q. There was no desire to keep him there?

A. No, sir.

Q. He tried various employments there did he not?

A. Yes, sir. This boy Keller, Louis Abraham;
775 I remember one time Mr. Bellinger—we pay four cents apiece—those boys were out cutting by the day and we had others cutting by the week and we paid four cents and others cutting one hundred logs got two dollars and those boys never cut over twenty logs and would cut from six to twenty logs. I got down and tried to explain to them but it was no use.

Q. That brings us down to the Mihaley incident. Explain that transaction?

A. Well, there are several different things I have not explained yet. I think I should do so, should give a little explanation of them I have been advertised enough here now. After this bunch this Fort Valley bunch came in there was a man named Joseph Rupert, a foreigner, a German, came to me on Sunday and told me that he had been down to the pool where they had been bathing and that he had hung his clothes up there and that he had $39.45 in his pockets and that some one of the bunch, there was either 12 or fourteen down there, and that some one of them had taken the money. He could not say who it was. I asked him who they were and those five were in the bunch and I did not really believe the man at the time—that was right before the Fourth of July. On the Fourth of July those boys went over and come back and all had had a hair cut and looked pretty respectable and had a little jag on—they had been around Florala all day. I saw them in the evening as they came in. After awhile I begun to think that this man Rupert did have the money and I went down and got to inquiring after the boys down there and one of the parties told me that those boys have got money—one come in here and bought a drink and got a ten dollar bill changed. Then I commenced to think there was something doing in the Rupert case. Well, it was not very long after that until a report reached me that some one had 776 broken into a trunk and stolen a revolver or something and there was a bunch I do not remember what bunch or who was in it but there were some Italians in it—

Government's counsel objects to Italian bunch.

A. The next stealing that was done there was two watches taken over in the house—some one reported that those fellows had come in and they had left their clothing in there and went to work and everything was gone. There was a revolver and eight or nine dollars taken also and these fellows all came to me with all of these reports—

Q. Did they usually come to you about what had been done to them in camp and report to you?

A. If I was out there they would come to me. I was looked to for everything. Well, I told some of the men around the shop, the blacksmith shop especially to watch them cars and see who went in there and I told Big Harry who was working at the shop I told Big Harry and a man named Withrill to watch that house. Well, I went over there one day and saw a crowd going over and I had told them if they saw anybody going in there to catch them and search them and he went in as I understand and met Squarehead in there and they searched Squarehead. Now, somebody got out of the bunk and came down and searched him and he had four pair of pants on but no pants were gone and some of them spoke about his having been searching through there and I says turn him loose. We did not find anything that day and I think it was the next day that I came along and I saw a crowd going up for this house again and I went over there and when I got there Big had a fellow down on the floor and they had searched him and I remember some one had a watch in his hand and he had two watches and a gun—they turned everything over to me except the gun and I told Withrill to give the gun to who- 777 ever it belonged to. There was two watches and $2.60 in cash. The fellow claimed that he had lost eight dollars and this fellow that was down there—he was talking German and Withrill was interpreting and I says what does he say and Withrill says he is praying. I says what is he praying about and he says some one told him you were going to give him over to the officers and they would hang him. I stood and looked at the fellow and they had a rope there because I had told Harry to tie him up that morning—it had been reported to me that he was down in the woods and had shown the revolver and said he was going to work. I saw the man and he loafed around the camp three or four days and he did not go to work and I asked about him and he said he was sick and some one asked what he was going to do about the rest of the money and Withrill said he said he would write to his father in the old country and would get six or eight hundred dollars. I do not think he ever said he would be a good man. I says turn the fellow loose. Some one said we ought to have knocked the devil out of him but it kind of hurt me and honestly if a man had raised a hand against him he had worked on me so that they would have to have licked me first. He got up and come over to where Mr. Lamata and me was sitting and says Mr. Boss don't do anything, don't call the police. I says you go on and get out of here and that is the last I ever saw of this man.

Q. He had been at work for some days?

A. He never worked. He came in with a crowd four days before and walked around and I asked what that fellow was doing there and they told me that he was sick; that is about as much as I know about his going to work.

Q. He never was under any contract and did not work there after that?

778 A. No, sir; he went over to the pool and tried to drown himself. He was under water over his head.

Q. Was Big Harry one of the ordinary laborers around there?

A. Yes, sir.

Q. Just the same as the rest of them, not a boss, nor a foreman, and simply the men themselves had taken this man down?

A. There was three or four foreigners there who could not talk English.

Q. Was there a rope around his neck?

A. No, there was a rope lying there but it was not around his neck because I took the rope away from them. I was not there all the time but I never heard of the rope being around his neck.

Q. There was no desire to keep him there?

A. No, sir.

Q. And he was not kept there?

A. No, sir.

Q. The desire was to get him away?

A. I think the fellow was crazy. If he was a man having any sense and finding that stuff on him I don't say what I would have done with him but he just looked to me like he was crazy.

Q. Now, let us come to the Mihaley incident?

A. There was several other incidents but it would take too long to go into them. When Mihaley came in he came in in the evening. He and this Benderstock and Benderstock's wife and along about eight o'clock I came back—some of the fellows had gone to work and these others were around the camp. Mihaley was there and Joe Benderstock and his wife and Mihaley was eating and I passed through the dining room and saw them there and I came out and a little while later Mihaley came to me—I did not know who he was and he had just English enough to say he was going to work at the 779 mill, mill, mill. I says where is your contract. He pulled out a paper and I saw it read work at turpentine work and saw mill. I handed him the paper back and never looked at his name and I says you are all right, you are in the right place and passed the paper to him and I went on and I went out around the camp and about nine o'clock Benderstock came to me and says gone gone. He did not talk very good English, took his nickel and gone and said something and I did not fully understand him and I says I will see you at noon. That was probably about nine o'clock and I says I will see you at noon. I understood him when he said the fellow was gone, but did not pay any more attenetion to it and when I came in that day I came in half past twelve and Benderstock was standing by the office and came again with the story that some fellow had taken his clothes and took two shirts, he is gone, he is gone, and I says the fellow that was with you this morning and he says yes and he took my shirts money and everything and gone. Well I got to talking around there, there was several talking about the stealing and some of the old hands came up there and said it was getting to be a terrible place that this stealing was going on and it was allowed to go on, and I remember one fellow in particular, his partner had lost a watch and he said this ain't the way it use to be, what kind of a bug house is it going to be here. It got me worked up so—that stealing had been going on a month and a half amongst those foreigners and I says I am going after that man if it takes every man that the Jackson Lumber Company has got. I told the operator to notify the authorities to phone to Laurel Hill and for him to go to Laurel Hill and catch this man. It was demoralizing my labor that stealing was so that good men who had followed me here were going and quitting and I started I went out and in about an hour I

got my horse and as I was going down I met Dr.
780 Grace and Mr. Sandor and I did not know at that
time that the operator had sent any word to the office and I says where are you going and they said we are going to look for the fellow who did the stealing and I says I will go right along with you so we got into the buggy, the three got in my buggy—

Q. Wait a moment. Just before you got along did anybody communicate with Mr. Sandor?

A. It was down there at my camp because I had left my phone—I tried to get them at the turpentine quarters and tell them I would go to Laurel Hill to see Atwell, the sheriff. I intended to lay a plan there to catch this man and when we were passing the turpentine quarters I did not have my gun that day—it was in the office because I did not always carry a gun—I did at times. When we got down it started to raining along about three miles from the camp and we stopped into a farm house and left the farm house and went to Laurel Hill to see if I could not get a warrant for this man and take him back. There was many a man I was acquainted with but he was an officer of the law and that is why I went after him. I do not think I saw—I do not remember (may have seen Atwell but I do not think I hardly did. I inquired for him and we went along. I went to turn around then, I thought I would go up—now I would like to illustrate. The road comes --have you got a plan of that road, Judge?

Q. No, but you can make a diagram?

A. Here is the log camp. That is the way we left. I drove to Laurel Hill. This is Laurel Hill. Here is about where we met Mihaley. My intention when we left there was to drive through here but when we came here me met Mihaley and that is the time we changed our plans. I wanted to take Mihaley to Florala and here is another roal leading to Florala here. Here is a road to Florala and here is one to Paxton
out around Lake Jackson, about two miles long. We
781 came through here around this road here to Paxton.

Q. Is Paxton in Florida?

A. Yes, sir.

Q. And Florala is in Alabama?

A. Yes, sir.

Q. Why didn't you take that road the short road back to Florala?

A. Because we wanted to take Mihaley back to Paxton. Now, when we left Laurel Hill Dr. Grace was sitting in the back of the buggy I was sitting on the right hand side driving

the horse and Mr. Sandor was sitting on the left. We came somewheres between Collins Mill and Laurel Hill, I was looking back at Dr. Grace cleaning a gun and I was talking to him and we came right opposite to the house and I happened to look around and I saw this fellow coming towards us and he came up and I says this is the fellow there and he came up and had a kind of smile on and I says that is the fellow and the doctor turned around—he had the gun in his hand and he walked around on that side of the buggy and when he got up I says Dock you don't want that gun. Dock says he might have one. When Dock came up to him I says Dock—he did not have any bundle—he had a coat on that I took to be the coat that he had taken from Benderstock and I says Dock see how many shirts he has got on. Dock took hold of him and then he grabbed him and then I hit over the buggy and shouted to him to let go and I hit Dock and he let go of Dock. They separated and this fellow turned around and walked up right and Dock was alongside of him and Dock had the gun in his hands that way and it had never been pointed at him and I says Dock see how much clothes he has got on, because he had no bundle and I says see what he has got and Dock began to search him again and he grabbed hold of Dock again and I jumped
out of the buggy and told him to let go. Well, the
782 horse started to backing up and got scared and I ran
back towards the buggy and got hold of the lines and held the horse. Now, this woman, Mrs. Paul, was sitting out on the veranda she and another woman and she says what is the matter. I says that fellow came into the camp last night and stole some clothing belonging to his partner and I am going to take him to Florala and give him over to the authorities and she says you served him just right and laughed. Now, this other woman, Mrs. Gipson, she come out about that time and I went on up and took this fellow and put him in the back of the buggy. None of us had ever spoken to him at that time, that is in any language that he could understand. After we got into the buggy I guess we rode a mile I asked Mr. Sandor if he could speak Bulgarian and when we got up about the road going to Paxton I think then we struck that road I hadn't decided whether I would take him to Florala or take him to Paxton. It was over the line and I commenced to think and had a little time to think over, because when I left camp the way things had been there I would not have stopped at the Florida line or the New York line. When I got over there I says I will go to Paxton and turn him over there and I drove towards Paxton. Before we got in there

I commenced to get my mad fit over again and I says to Mr. Sandor ask him if he will go back and face the music over there and give this fellow back the clothes and see what he will do and he turned around and asked him and told me that he said he would go back, so then we drove on through Paxton and did not stop and drove on and stopped and got a cigar at Florala and then went on to Lockhart and got there—it was about I should judge probably seven thirty—between seven thirty and eight o'clock. I stopped there a few minutes and I was going to go to camp and I got in the buggy and I shouted to him—he was talking to some foreigners and did not pay any attention and I hit him on the shoulder with the whip and says you come on. I just done it to get his attention and I did not hit him any two licks at the commissary—we were right there in front of the commissary.

Q. How far is that commissary from the hotel?

A. It must be two hundred yards.

783 Q. Was there any obstruction between this point and where you stopped at the commissary and the hotel?

A. There was the post office and the meat market, two buildings.

Q. Could you see the gallery from the hotel from where you stood?

A. No, sir.

Q. Now how long did Mihaley remain there?

A. You mean before this?

Q. No after that?

A. I don't know, he remained there in the morning; when I went back I asked Benderstock if you got his stuff from him, and he says yes. Now, I do not know the next transaction I had with Mihaly unless it was when the marshal came up there and in the office, in the presence of Mr. Harlan there, he told me he wanted me, Mr. Porter and this man that I had brought back from Florida, to go down to Pensacola, and I could not give him a decided answer whether the man was there or not, but I told him I thought I had seen him three or four days before.

Q. Who was that you told that to?

A. Mr. Wolfe; so when he went out there the first I remember of seeing Mihaly was that he come up there that day at dinner time and I pointed him out to the marshal, and I says that is the man there.

Q. Now, then he came down here from your camp did he not?

A. Yes, sir.

Q. He did not come in the custody of any officer did he?

A. I was out in the woods on Saturday morning when I heard that the marshal was there. I was fixing on going to Jacksonville; I had to go to Jacksonville, Florida, and I was fixing on going that day; I thought I would take the two o'clock train and go down; I was out in the woods and I think Mr. Bellinger was along and the time keeper came out and told me that Mr. Harlan had called me up over the phone, and I went up to the camp and Mr. Harlan told me that Mr. Wolfe was in there, the United States Marshal, and wanted to see me. Of course I had heard reports, in fact I had seen the charge in the papers, and so I decided not to go then, and I
784 drove in and met Mr. Wolfe in Mr. Harlan's office; and that is the time he asked me.

Q. Now the first time you came down here, it was somewhere about the early part of July, was it not?

A. Yes, sir.

Q. And Mihaly came here not in the custody of any officer did he?

A. No, sir; Mr. Wolfe requested me when I got him in here that night, I think he said he would have an officer at the depot; when I got to the depot I met a policeman and asked him if Mr. Wolfe had instructed him to meet a man at that train? I didn't see anybody else; and he said no. I stood around there a minute and I sent him down to the hotel, and I told Mr. Newlander to look after him, and be sure that he got to Mr. Wolfe in the morning.

Q. Did you pay Mihaly's way down here?

A. The time keeper paid his way down here; I met them at Crestview; I had been over to DeFuniak that day.

Q. Did you have every opportunity to have gotten Mihaly out of the way between the time Mr. Wolfe was up there and thetime he came here?

A. I certainly did; I had time to get Mihaly and myself and every one else out of the way that was connected with it if I had wished to do it that way.

MORNING SESSION.

Q. I believe you had just finished with the Mihaly case last night? The next case—that was on the 19th of July, I believe, was it? That brings us down to the two men that went back with you in the buggy, that Mr. Stokes, I believe, testified to, seeing you pass Laurel Hill with? State the circumstances connected with that?

A. That was on the twenty-first of July,
785 I think about eight o'clock in the morning; some one informed me that there was a message came up from the telephone, stating that there were two men at Laurel Hill, and as Mr. Atwell had been advised to look out for these people when they got away from the camp, stealing, I understood that it had reference to some of these men, and I told the watchman, Louis May, to hitch up my horse. He happened to be the barn man and he hitched up my horse, and I did not say anything to anybody. I have one dog there, a little bitch; she weighs twenty-one pounds; a terrier, and is around the camp all the time; and there is another dog there about half terrier, that belongs to Mr. Cox. Those dogs very often follow me, and are in the buggy with me two or three days out of the week; they go all over the woods with me; some times both, sometimes one; and they followed me when we left the camp. When leaving the camp I asked him to take a ride with me, and I went on out of the town to Laurel Hill, and inquired for Mr. Atwell, and they told me he had gone down towards Campton, and we drove along towards Campton, and got down two or three miles, and overtook Mr. Atwell and we had a talk about it, and I told him that I did not know, unless it was some of those fellows that had stolen a day or two before that he tried to describe, and he could not give a very good description; and those two dogs got off after some sheep in the woods and the man in the woods stopped to take care of the dogs. When we got down below Clary's still we saw those two fellows and I told Mr. Atwell I did not think they were the men I am looking for, and we drove up a little closer and I says no, I have never seen these men before; they may have come from the mill or some place, and I stopped the horse there, and he says I will go and find out. He says I will ask where he came from, and what was the reason for leaving, and he went over and had a talk two or three minutes, and they came back over to him and talked to him. I asked the men where they came from, and
786 one could talk fairly good English and the other could not speak but very few words; he said they had some difficulty at the camp, and I said is that your reason for leaving there, he said yes, I had never seen the men to know them; I knew they were not my men; I said did not you see Lamater, and by that time I had stepped around and gotten hold of the lines, and was about to get in the buggy, and I stood talking to the fellows, and one said he had a brother at the log

camp and asked me how far it was to Pensacola; and I told him sixty miles, and then he said he wanted a job at the log camp, and would go back; I didn't promise him for certain, but I told him I thought I could get him a job there, so he came around, both had little bundles, and put them in the buggy, and I was standing and had hold of the lines with this hand, and Atwell, he seemed to be a little timorous about them, advising me not to have any trouble with foreigners; he would not, and he kind of said on the side, I believe that fellow's got a gun; I says I do not care, and when we stood up along side of the buggy I reached over and says have you got a gun there, and felt by his coat there, and when I did he made a swinging blow at me, and I dodged down and it knocked off my hat; I just took him and whirled him around, and shoved him, and he made a kick at me and I says what in the devil do you mean, and it seems that he did not understand me; I says I am going home now, and got into the buggy, and we talked a few words, and the German and this fellow says: "No, no, me no done it." He could not speak much English, and says, "Me no gun;" I says which way are you fellows going, and this fellow says we are going back to the log camp, and I says you can get in and ride if you want to, and he got in. The other fellow was walking; and I says you can ride in here if you want to, there is lots of room, and so he got up, too, and got in the back of the buggy, and rode up to the spring, and got out and got a drink of water, and then him and the
other fellow got in and they went towards Laurel
787 Hill, and when we got two and a half miles from
Laurel Hill this fellow that was riding in the back of
the buggy jumped out and said, "Me lost my money, my money," and I says what is the matter with you? I did not believe he had any money. He says, yes, sir, he had lost thirty dollars, and said he would go back and I told the other man you go and help him look for it, and this German sitting inside of my—the one who could not talk very much in English—he didn't go; I told the other man that I would let the horse graze around there for a while, and I took my other lines out and made a kind of rope for him, and he grazed around there, and I tied up the horse; he didn't seem to want to eat, and the other German laid down under the tree, and then I laid down and fell asleep. I probably slept half an hour, then got up and hitched up the horse again; I did not see any signs of those fellows, and about that time I got the horse hitched up the other fellow came back and I told them to wait there until I got back but he got in the buggy and says no,

And we went down to meet the other two fellows; they had found twelve dollars in money. We all got in and we went to the saloon; we got out there and the boys watered the horse and took him out, and we went and got a drink; I suppose we were around there ten minutes, and we left and started to camp, and in going through Laurel Hill, why I heard testimony the other day, I want to say right here there was no line or strap nor anything that would indicate a line thrown over the back of the buggy; there was no strap nor anything to tie the man with; we got up to the camp; they got out before we got to the log camp it was on Saturday evening the trains had all gone I had driven the horse considerable distance that day; they got out at the well and got a drink, and I went around and told the cook to give the men supper. I took a lunch off the table and went out and drove away, and I did not know there are so many men that comes to that camp; I did not know whether they worked there or not; I was down in Florala some time two weeks, 788
after that he came down town and asked me if I could tell him where to get some shoes, and that was the last I saw of this man.

Q. Had you ever seen these men around the camp before?

A. No, sir.

Q. Did they owe this company a cent so far as you know?

A. I do not know.

Q. Now, Mr. Gallagher, did you have a watchman around these camps at night?

A. Yes, sir.

Q. Who was it?

A. Louis May.

Q. Before I get to that any other one of the defendants were you with when those two men that you spoke of came back the last time?

A. No, sir.

Q. That was the watchman, was it?

A. Louis May.

Q. Now, how long was there an extra watchman put on?

A. There was a case of stealing reported to me by a fellow named Sam Worden; he stated to me that he had a blue serge suit of clothes stolen; he did not care so much about the clothing, but there was a pawn ticket for five dollars in the pocket; he had pawned a suit of clothes in New York and got five dollars, I think, and they were worth forty-five dollars, and he made a kick about the pawn ticket. Well, I kind of suspected this Maginnis at the time, and I think it was on Saturday evening, but this Joe Davis and a fellow that was a witness here at the preliminary hearing said that he saw a fellow take the clothing out of the car, and I went down towards the branch—I do not think he have the fellows name that day, but did later on—and it was Mr. Bellinger I think who spoke to me about it, and I said we would put 789 some one to watching this branch and see who went down there to the branch to get the clothing; we expected they were down there, as those fellows had gone towards the branch, and all were there yet, and none had left. We but the Big Harry to watch that branch and the way around between the branch and this camp, and I think he was there, I do not remember, one or two nights, he might have been three, but I know when he was taken off; I think it might have been Tuesday morning, but I am not positive, but Davis had told them that it was Stony and Whity, that he saw Whity take the clothing and go out through the window; I sent Big Harry down on the railroad to where Whity and Stony was working; now, those are the two men that this man ——— had reference to the other day when he said they were brought back; he knew they were brought off the railroad; they were brought up from the work, and I told Big Harry to take the two of them over and told him to get on the train and turn them over to the authorities.

Q. Was anybody else put on extra out there besides Big Harry?

A. Not that I remember of; the watchman sometimes he goes away for a week, and if he is off at night he puts a man in his place; I have nothing to do with that.

Q. I mean was there any extra double watchman except the two or three nights?

A. No, sir.

Q. Big Harry is the foreman or a boss, or just one of the ordinary laborers?

A. Just an ordinary laborer; he repairs cars and greases cars.

Q. Just an ordinary laborer same as the others are?

A. Yes, sir.

Q. Mr. Gallagher, was anybody at that log camp ever brought back to work out a debt at any time?

A. No, sir; not at that log camp.

790 Q. Now, did those men come and go at pleasure?

A. Those men I do not see any reason why they should not;

I would like to explain about the foreman going out in the woods with them?

Q. All right?

A. Now, we have, on the railroad we have got two or three foremen, Angelo, he was a foreigner himself; he could speak two or three different languages; I took him at Fort Valley and put him in charge of the men; I thought as he was a foreigner he could handle them better than anybody else, because he could speak several languages; sometimes they go a mile and a half to work; now, the foreman in the morning, Mr. Bellinger, either he or I, in the morning all of them have a separate foreman—I do not know, he is mixed up with a car, sometimes he goes by himself, may be he and some will be walking along together and I do not know he is going to work until he gets out there; may be half of his crowd lays in; he does not know how many are going to work until he gets to work; and these men very often sent from one place to another, from one car to another; the foreman don't stand over them all the time; he has other business to look after; tracks here and there to see whether the spurs are staked out; he is not continually with them; sometimes he sends two or three men a half a mile ahead to get out a right of way.

Q. You have been around mill plants, railroads, and different enterprises, have you ever known any men worked by the day who did not have a foreman or a boss?

A. No, sir.

Q. Was there any difference in the boss there and the foreman from what you observed upon railroads, and everywhere else?

A. No, sir.

Q. Now, as a matter of fact, did or did not a number of these people leave that were indebted and no efforts
791 were made to bring them back?

A. I think from the log camp up to the time I went after Mihaly there were at least thirty or forty that had left there; eight that left at one time and went to Florala, and loafed around and stayed a day or so at Laurel Hill.

Q. You knew where they were?

A. Yes, sir; on Monday morning I generally leave Lockhart about four or half past four, and come into the camps; I met four one morning going down with their baggage; I do not think they stayed over four days.

Q. They left from time to time still indebted to the company, and you knew where they were?

A. Yes, sir; some of them, I told them to leave there.

Q. And some of them went without telling?

A. Yes, sir.

Q. And no effort was made to bring any of them back?

A. No, sir.

Q. Do you know what the duties of Mr. Newlander was; is he a foreman or did he have charge of anybody or of a gang?

A. No, sir; Mr. Newlander, he came to keep time for me; somewhere about the first part of October.

Q. Now, what were Mr. Sandor's duties so far as you knew? What did you observe? Did you ever observe him in charge of any men?

A. No, sir; the time I saw him he was in the naval stores office in Lockhart; sometimes he was out in the still crating rosin, and he has come out a few times to interpret for me.

Q. Was he not a general interpreter to be called up if anything occurred anywhere and everywhere about those camps?

A. I do not know anything about any camp except my own; I have called upon him to come out to my camp and explain to me something that some of the fellows
792 wanted.

Q. Is it not a fact that a number of these same foreigners lived in Lockhart?

A. Yes, sir; they went down South, they came to the camps, first day or two they came to the camps, and after they got around to see where they wanted some went to the mill, several came to the camps, and went back to the mill; I had a better way of taking care of them than down at the mill; they had come out there and got what they wanted to eat and a good place to sleep, and in Lockhart they either had to go to the hotel or hunt up some private boarding house.

Q. Now, these people that would leave there, would they return, any of them, of their own volition and apply for labor?

A. Some of them did; I think somewhere about ten or fifteen.

Q. Are these foreigners that left?

A. Yes, sir.

Q. They struck around awhile, and struck back again?

A. I think six came to Pensacola on one occasion and stayed here a couple of weeks, and sent up a man, this Joe Roubert, to see me if I would give them a job, and I said to him—I think Mr. White came down with him, and these men went back and went to work. Every one, several others that went away, and wrote back to me asking me for a job.

Q. Why did you carry this pistol that you spoke of?

A. I never carried a pistol; I never owned a pistol until a year ago, somewhere about the fourth of July, and I had a man, he had been in charge of railroad track building; his name was Shelby, and I had discharged him; he had been drinking a good deal and I discharged him on account of his drinking, and he wanted me to give him a job on the main line, and I did so; well he got to drinking again and I do not know what his reasons for it were unless he thought I was going to put in another block against him, and he
793 came up to me on this day, it was on a Sunday in
July, he got to talking to me and says I want to talk to you; I says I have not got time to talk to you; he says I want to talk to you; I says I will see you after dinner; and he says I am going to see you right now, and I am going to kill some of your kind; I says you want to start some trouble, and he grabbed me and had a knife up his sleeve and threw the knife into me, and I was pretty badly done up over that, and since that time I always carried a gun in my pocket, whether it is night or day, and there are times when I go out through the woods, but it is not very often, I have on different occasions left the gun in my pocket, when I left the buggy, and I would go to the woods, and not go up to the office, and would take the gun over sometimes. You gentlemen don't know the character of the men that work there.

Q. Are those men quiet, peaceable, temperament working out there or not?

A. A certain percentage; a great many though are not.

Q. Do they fight among themselves?

A. Yes sir; they go over to Florala and get tanked up and come back with a jug of whiskey and get into an argument and have a great many fights.

Q. Among themselves?

A. Yes, sir; the negroes got into a fight on one occasion here not long ago, and I happened to be there and stopped the fight—

Government's counsel objects to the statement of witness.

Q. You mentioned something about a law in Georgia about enticing away labor?

A. I was not very positive about that; there is a law in the State of Alabama.

Q. Didn't you say on yesterday afternoon that you had had some of your men arrested up there was the reason
794 you knew of such a law in Georgia?

A. For recruiting labor.

Q. Taking away labor that was working for somebody else?

A. Yes, sir.

Q. You suspected this long-whiskered man, did you, as being the man who was enticing away your labor?

A, I did not say he was a Jew,

Q. The long-whiskered man—then there was others besides the long-whiskered man who had been talking to your men?

A. These two men seemed to be interpreters for them.

Q. And he was the man you went out looking for an officer to bring him back?

A. To arrest—I was looking for a justice of the peace first.

Q. You did not find that justice of the peace?

A. No, sir.

Q. Who did you find?

A. I found an officer.

Q. What sort of an officer?

A. I don't know, he had a star.

Q. What did he claim to be, the sheriff?

A. No, sir.

Q. How many did you find of such officers?

A. He was the only one, there was two there.

Q. You found the officer; did you inquire any further about it?

A. I did.

Q. Did he take and direct you to a justice of the peace?

A. Yes, sir.

Q. You did not make any affiidavit against this man for talking to your people?

A. He said there was no justice of the peace that I could see that night.

Q. That was Sunday?

795 A. I told him—

Q. You made no effort to get out any warrants or make any complaint against these people?

A. No, sir; the next morning the men were all back.

Q. Instead of having the Jew brought back to the car, or taking out papers against him, these foreigners came back—where were you when you first discovered that any foreigners had been brought back to the car?

A. About a block from the car.

Q. Was it not in the night time?

A. No, sir.

Q. What time of day was it?

A. I think about seven o'clock in the morning.

Q. Was that the only batch that came back?

A. No, sir.

Q. When did those come back?

A. Some time between eleven o'clock and one o'clock that night; I did not consider those foreigners.

Q. Was it not some of the men you had had in the car?

A. Yes, sir.

Q. Some of the Jews or Hebrews you said?

A. There was one Hebrew among the five.

Q. How many bunches were there got away?

A. I do not know—I do not know how they went, I saw them when they came back.

Q. Now, did you see this officer you spoke to about the justice of the peace about the time you said they come back?

A. No, sir.

Q. You did not see anybody with them?

A. I did.

Q. Who was with them?

A. I think one or two men.

796 Q. One or two strangers?

A. Yes, sir.

Q. Now, the first you discovered of their getting out of the car was late Sunday afternoon?

A. About eight o'clock.

Q. And one batch came back between eleven and two in the morning? Had you been asleep?

A. Yes, sir.

Q. Where?

A. I lay down and fell asleep in the car?

Q. Were you aroused between eleven and two o'clock?

A. Yes, sir.

Q. Who aroused you?

A. I do not know.

Q. You just waked up?

A. No, sir.

Q. Was it the bugs that you got from Foster?

A. I had some trouble from them. The strange man woke me up.

Q. What did he say to you?

A. He told me to come out.

Q. Was that not a sort of invitation?

A. Not at all.

Q. What did you find out there?

A. I found a man with a lantern.

Q. What else?

A. And the other five fellows.

Q. That had left the evening before?

A. Yes, sir.

Q. What did they say?

A. He asked me if they were my men?

797 Q. This stranger?

A. Yes, sir.

Q. What did you tell him?

A. I told him yes.

Q. What did you tell the boys to do?

A. I did not tell them at that time to do anything.

Q. They walked into the car?

A. I don't think they did at that time?

Q. This stranger you said had explained to you that he had picked the men up for vagrancy?

A. Not the stranger, no, sir.

Q. He didn't say anything?

A. He did not say that; he asked me if I could identify them.

Q. He did not give any explanation as to where he went for the men or found them, or what he brought them back for?

A. No, sir; I told him they were my men and he asked me if I could identify them, and he asked me their names, and I told him I could not give their names, and he said he would lock them up, and I said all right, go ahead.

Q. Did he lock them up?

A. No; he says are you sure they are yours? I says I have got men in here that knows them, that came through with them; and he says I will be down in the morning to see you about it.

Q. Was he the same man that you talked to about having the long-whiskered man arrested?

A. No, sir.

Q. How was he traveling?

A. I do not know that he was traveling at all; he was standing around when I saw him.

Q. Did you see any wagon or buggy?

A. No, sir.

798 Q. Did you see him the next morning?

A. No, sir.

Q. You never saw him any more?

A. No, sir.

Q. He disappeared about as mysteriously as those boys did?

A. Yes, sir.

Q. Did he disappear with anything belonging to you?

A. No, sir.

Q. You are certain of that?

A. I am certain, positive of that.

Q. You did not part with anything of value?

A. No, sir; because I didn't have hardly anything with me; I was pretty near broke.

Q. Didn't you think the strange man there was satisfied?

A. He said he would be down in the morning.

Q. What time did you leave in the morning?

A. Eleven or twelve o'clock.

Q. There was another bunch, how did they mysteriously appear?

A. About seven o'clock.

Q. Did they have any escort?

A. This offirer was there.

Q. The same fellow that you talked to in here?

A. Yes, sir.

Q. The same stranger, didn't you say you didn't see him any more?

A. No, I did not say so.

Q. Didn't you say he did not come down the next morning?

A. I had reference to the man who came with the other five.

Q. The other lot of boys?

A. Yes, sir; we are talking about the foreigners now.

Q. How many were in this crowd that was brought back?

A. I think five.

799 Q. How many came back in the other crowd?

A. I think twelve.

Q. Well, now, what sort of a consultation did you get from the other officers who came up?

A. I do not remember his first words.

Q. You had some words with him?

A. Yes, sir.

Q. About these men?

A. Yes, sir.

Q. What became of this man?

A. I asked them if they had been out on a little pickaniny party?

Q. You asked him that?

A. I asked the man if they were not hungry and if they didn't want something to eat.

Q. Were they locked up?

A. Not that I know of.

Q. Did you part with anything of value with this officer?

A. No, sir.

Q. Didn't you think he was extremely accommodating?

A. I don't know anything about it.

Q. You stayed there a good while that day?

A. Until twelve o'clock.

Q. You did not take enough interest to ask him where he took up these fellows:

A. No, I did not; he said about the first words, what are you boys going to do, have you been out on a pickaniny party? Do you want your breakfast, or something like that.

Q. Were you not glad to see them get back?

A. No.

Q. Don't you know that Mr. Gallagher was out ten dollars for each man?

800 Q. What were you making those deposits in the Old Dominion Line in New York for?

A. I thought I was going to get some laborers and those fellows came back; I was not very particulár after getting them back.

Q. You was particular enough to get them in Savannah and put them on the train and accompany them on the way out there?

A. Yes, sir.

Q. That was the company's money?

A. Yes, sir.

Q. Didn't you say you were held responsible for the results of those men when they were working it out at camp, that it was your place to look after them?

A. Look after labor, yes, sir.

Q. You did not care whether the men came back or not?

A. If they had looked to me as to laborers, yes, sir, I would have been more concerned, and would like to have had them back.

Q. You had no objection to their coming back in the cars and giving them a good breakfast?

A. No.

Q. Where is this long-whiskered fellow, have you ever seen him since?

A. No, sir.

Q. Have you ever seen either one of the Jews since?

A. No, sir.

Q. Did you know either one of the officers that appeared there that night with the five boys or the other fellow that came up the next morning?

A. No, sir; I could make an explanation to you.

Q. How did you find out they were officers, the one you say you met up town when you were making inquiries of the justice of the peace to have the Jews arrested, didn't he tell you he was an officer?

801 A. He had a star on his coat.

Q. Do you know that these men are there yet, or do you know that they are not in Fort Valley?

A. No.

Q. Have you made any attempt to locate them or find them?

A. No, sir.

Q. Did you give these officers or anybody else at that time or at the time of their disappearance any description of these five?

A. I do not think so.

Q. Did you give them any description of the twelve?

A. No, sir.

Q. Did you give anybody any number of men that escaped from that car?

A. I might have done so.

Q. For what purpose?

A. I am not positive as to giving it.

Q. That is any officer or anybody you were speaking to about these men, these Jews, and the long-whiskered fellow talking to your men, you gave them no description at all?

A. No, sir; I do not remember that; I do not remember giving the number, I might have done so.

Q. You had no conversation about the time those boys walked back into the car that night?

A. These five boys?

Q. Yes sir.

A. No.

Q. They did not make any demands of you or anything?

A. No, sir; not that I remember now.

Q. Didn't you think he was a pretty easy man to satisfy?

A. I think that he said he would come down the next day.

Q. You did not see him any more?

A. No, sir.

Q. What did the boys have to say, where they had been

or why they happened to come back; did they make
802 any explanation to you?

A. No, sir.

Q. Do you remember seeing him, the fellow who had the bugs on him, that evening about the time the boys disappeared?

A. I think he was around the cars.

Q. Did you leave him up town anywheres or ask him if he had seen any of the boys?

A. I think he was prying around the town.

Q. State whether you had any conversation as to whether he had seen any of the boys go away?

A. I do not remember; I do not think there was; I remember seeing him at the car, and when I left the car he was there, and in fact I was at no place except up town and around the cars and back, after I learned those fellows had gone.

Q. Well, get down to the other incident, that is the first, this incident number one, Fort Valley incident?

A. Yes, sir.

Q. Let us get down to the Bulgarian incident. Was he brought down on that trip?

A. Yes, sir.

Q. So he got back after he had been lost in a mysterious way?

A. No, I think he was in the car all the time.

Q. Now, at the time you had this little unpleasantness with the Bulgarian you were trying to get a ticket out of the drawer?

A. Yes, sir.

Q. You don't know whether the Bulgarian had fallen on you accidentally in coming out or whether he pushed himself on you?

A. Yes, sir.

Q. Were you very irritable that day?

A. The door cut me.

Q. You did not stop to inquire whether it was an accident or what not?

803 A. No, sir.

Q. You turned around and went for the Bulgarian in a very savage manner?

A. No, very savage.

Q, Don't you think the man deserved some explanation for that sort of business when you did not know whether it was intentional or not?

A. I took it at the time that it was purposely done, and didn't stop to consider, and it was the jab he gave me in to the corner of the door that made me swing around on him.

Q. You do not think you kicked him at all?

A. I am positive I did not.

Q. You had trouble you say not only with Foster's bugs, but also red bugs, and you say you got your legs poisoned the same day?

A. Yes, sir; that morning I was out in the woods, and it was wet, and I had not been out for a few days, and it might have been the next morning.

Q. Were you out looking for the Bulgarian?

A. No, sir; I was not.

Q. Was that the first time this year that you had been out in the woods early in the morning?

A. It was the first time very probably sometime in June or May; I had been away and left there the second of June, I got back sometime about the twenty-third; I was there one day and I drove out in the woods.

Q. You saw the Bulgarian out in the woods that morning and somebody else walking around; were you barefooted?

A. No, sir.

Q. Dressed like you are now?

A. I had a pair of low quarter shoes on?

Q. Did you have on socks?

804 A. Yes, sir.

Q. How long after this incident before you discovered that your legs were sore?

A. It was probably three or four days.

Q. What was the character of the soreness on your leg?

A. My legs in the first place, there was a red spot coming on them.

Q. Both of them?

A. Yes, sir; this one was not as bad as the other; then came big blisters.

Q. Was anything blue or black around them?

A. No, sir.

Q. There mas no identation or abrasion or breaking of the leg?

A. Not up to that time; then those holes, three of them at one time.

Q. Have you got any holes?

A. Yes, sir; running sores, three of them, and I got some stuff from Dr. Trammel, and I suppose it was five or six weeks that I had to take a stick to walk.

Q. You are certain the Bulgarian did not kick you on the shins?

A. I am certain.

Q. I understood you to say yesterday afternoon your business was out in the woods a good deal of the time?

A. Yes, sir.

Q. Going about through the turpentine camps?

A. No, sir.

Q. Was you not just as liable to get bugs on these trips as any other trips?

A. Yes, sir; but I got—it was either that morning or a few mornings following because—

Q. Have you been engaged in the same business since then
going out through the woods, in the same woods,
805 going about?

A. Yes, sir.

Q. You have not had a similar attack of red bugs?

A. I think they leave sometime in August.

Q. Were you ever bitten under the arms in the month of August or the upper part of the legs?

A. Sometimes I have little blothes up there.

Q. Have you had occasion to scratch yourself in the groins from red bugs?

A. Yes, sir; but due poison don't get up that far.

Q. You say this Bulgarian made some attack on you after you shoved him?

A. No.

Q. And you told him to go away from here?

A. I says I will run you away from here.

Q. He had been there only about half a day?

A. Something like that.

Q. He had not been to work?

A. No, sir.

Q. He was owing the company for transportation?

A. Yes, sir.

Q. And he was a big, stout looking man?

A. Pretty fair man.

Q. If you were able to take care of yourself in the manner described, were you apprehensive of that man, were you afraid of him?

A. No, sir.

Q. Now, tell us why you were permitted to tell him to leave there?

A. Because he had given me a shove and angered me at the time, and I says I will run you away from here.

Q. Did you hear the fellow Greenfield testify?

806 A. I think so.

Q. Was he there at the time?

A. I remember seeing him outside the car.

Q. He was your witness in this case?

A. Yes, sir.

Q. Now, you are certain you are angry and mad at the time, are you certain that you are correct, or that Greenfield was not right.

A. I am correct in what I say regardless of what the whole crowd says.

Q. You say your revolver was kept in that desk?

A. Not always, sometimes.

Q. Are you certain you did not get this revolver out?

A. That time?

A. Yes, sir.

A. I did not say it was in my desk.

Q. At that time?

A. At that time.

Q. Didn't you say that you had the habit of keeping your revolver—was that not your office?

A. Yes, sir.

Q. What purpose did you have in taking the pistol out and sticking in your pocket?

A. I went to the buggy and took it out when I came in through the kitchen.

Q. Were you expecting an attack from the Bulgarian then?

A. No, sir; it was wet and I wiped it off and put it in the corner of the dining room.

Q. Do you know what the Bulgarian wanted when you pulled him on the platform?

A. I did not pull him on the platform.

Q. Did you pull him from the platform into the

807 office?

A. I pushed him ahead of me.

Q. Was it necessary to do that to get him a ticket?

A. Yes, sir; he could not understand me.

Q. Well, you had a great many who could understand was that your method of treating them all when they could not understand you?

A. Sometimes I would have to talk—

Q. On this particular occasion he had not attacked you on the platform?

A. No, sir.

Q. And you shoved him in there because he could not understand you—was it long association with these people that made you mad, and caused you to ffy into such a passion?

A. I was in no passion until I got the shove from the Bulgarian, then I was not very much out of the way.

Q. You only struck him with your hand?

A. No, I did not say so.

Q. You slapped him twice and then struck him with your fist?

A. I said two or three times, I am not positive of the times I slapped him.

Q. You say he staggered back?

A. I hit him here.

Q. And knocked him back?

A. Yes, sir.

Q. What time of day was this?

A. That was about one o'clock.

Q. Were the men all in the car eating—the old Bulgarian had not had anything to eat?

A. I do not think so.

Q. What became of him after this assault?

A. I do not know what became of him.

Q. You do not know whether he ate anything or
807 not?

A. No, sir.

Q. Did he make any complaint, did he say anything at the time you were hitting him?

A. I could not tell you.

Q. Did he say anything about having any money?

A. I could not tell you.

Q. Then he might have said, "no money, no money."

A. No, I do not think he said anything in English.

Q. You were pretty much excited at the time?

A. No, not very much.

Q. Well, then it does not take much excitement, much irritation for you to go after him in that manner?

A. If a man comes at me I am ready to meet him.

Q. You were limping and slipping around with that leg?

A. I used to have to walk with a stick.

Q. Dr. Trammel treated you?

A. And Dr. Grace, I had Dr. Grace give me salve, that cured it up—horse salve.

Q. How much treatment did Dr. Trammel give you?

A. I do not know, he gave me a box of some stuff.

Q. Did he ever see that leg?

A. Yes, sir.

Q. Had he forgotten it from the time he treated it up to the time he got on the stand?

A. I never asked him any questions.

Q. Was your leg much inflamed?

A. It was swollen around the ankles.

Q. Have you seen the Bulgarian's leg?

A. I saw it at a distance.

Q. Did you discover the difference between the condition of your leg and his; do you think your leg was as bad as his?

809 A. My leg was as bad as his, but I took care of it.

Q. How did you get rid of the fever with that leg?

A. I had the fever this summer.

Q. Was it caused from that leg?

A. I could not say.

Q. Was that leg ever lanced?

A. No, sir:

Q. Where did you stay when you were sick with that leg?

A. Around the cars; I was not laid up altogether like that, only when I got through with the work I laid down.

Q. That is incident number two?

A. Yes, sir.

Q. The Maginnis incident number three; were you afraid of Maginnis?

A. Not in particular.

Q. How much of a man was Maginnis?

A. About as much as I am.

Q. How long since you have seen Maginnis?

A. Not since they brought him out of jail.

Q. At the time of the examination in the summer time?

A. Yes, sir.

Q. Did he look pretty big the day you were after him?

A. I think about the size of me.

Q. Have you seen the old fellow Abraham?

A. Yes, sir.

Q. Have you seen that boy John Davis?

A. Yes, sir.

Q. Is it not a fact that Magannis was about the size of one of those boys?

A. I think Abraham is pretty near as heavy as I am.

810 Q. Don't you think that Maginnis would weigh 125 pounds?

A. I think he would weigh more than that, 130 or 140 pounds; I weigh about 148.

Q. You had got a little scrap with him?

A. It did not last very long.

Q. You knocked him down?

A. I knocked him over the side.

Q. And knocked him across the track?

A. No.

Q. He fell down across the track?

A. No.

Q. Was that after he laid off his coat and hat?

A. Yes, sir.

Q. What time of day was that?

A Along about six o'clock.

Q. Hot weather in July?

A. Yes, sir.

Q. Do you know whether he had on any coat or not?

A. Yes, sir.

Q. Are you certain of that?

A. Yes, sir; he had it on, and took it off.

Q. What kind of a coat?

A. Some kind of a coat.

Q. Did you have on any coat?

A. No, sir.

Q. It was very warm to wear coats?

A. Yes, sir.

Q. He had been there all day?

A. No, sir.

Q. When did he arrive?

A. Sometime about—shortly before six. About five o'clock.

811 Q. After he got up and you knocked him down he came back at you.

A. Yes, sir.

Q. Did you hit him again?

A. Yes, sir; the next time I slapped him.

Q. That was what tumbled him, that slap?

A. I think so.

Q. He got up again, did you hit him again?

A. Yes, sir.

Q. Did that tumble him?

A. Yes, sir; he went back on the seat again.

Q. Did he ever get up that time?

A. I didn't wait for him?

Q. Then you conveniently had recourse to your pistol?

A. I put my hand on my gun; I was not afraid of Maginnis, but I was in amongst ten or fifteen of his friends.

Q. What attitude was Maginnis in?

A. He was down, he fell in amongst them; there was three or four, and I grabbed him by the neck.

Q. Then he got on his knees?

A. No, sir; I pushed him over the track, and helped him over the track; I made another grab at him as he went over the track, but I don't know whether I hit him or not; then he got up on his knees and hands.

Q. There was considerable crowd of men around there?

A. A few men.

Q. Where were all the Hungarians; was there not considerable fuss and racket; was there not considerable fuss and profanity?

A. No, sir.

Q. Did Maginnis use any?

A. I do not know.

812 Q. Did you use any?

A. I might have done so.

Q. Didn't it, was it not of sufficient character to attract all the Hungarians and strangers?

A. I don't know, there was probably ten or fifteen I know of the men of the crowd that came when Maginnis was there.

Q. Now, then, it was that you put forth the fourth of July celebration, was it; Maginnis was on his knee and had his hands up?

A. He says, "I will be good, I will be good."

Q. It was after that that you pulled out your pistol and fired three or four times—was that not a demonstration for the purpose of giving the parties an illustration of what you could do with a pistol?

A. I do not know that I made any great blow over it—I just simply pulled my pistol and fired three shots.

Q. Was it not for the benefit of the whole crowd?

A. I don't say I did that to give them any understanding, but I wanted them to understand that they first had to tackle me; I did not want to make that impression on them, but—

Q. That you were boss there?

A. Yes, sir.

Q. Now, do you know just what time you drew that gun?

A. I do.

Q. You say it was after Maginnis was on his knees?

A. No, sir.

Q. You say he never got up after you knocked him down the last time?

A. I do not say that.

Q. I understood you to say so; I do not want to be unfair.

A. I explained to you twice before.

Q. And Maginnis was on his knees saying, "I will be 'good, I will be good," when you fired the pistol?

A. No. I turned away from him after he said that and before I fired the pistol.

813 Q. Didn't you say yesterday afternoon that Maginnis was on his knees in front of you, and that you took your pistol and held it around behind me.

A. No, I did not say I held it behind me.

[Q.] To one side of you—at what range, what position did you hold it in?

A. In about that shape.

Q. Did you look to see whether there was anybody in the range of the gun?

A. Certainly, I held it right down to the ground; it struck the ground not over two feet away.

Q. When did you discover that it struck the ground.

A. Because I know from the way I held it.

Q. So Maginnis went into the car?

A. I think he did.

Q. You didn't look after him?

A. No, sir.

Q. Did you see what became of the others?

A. No, sir; I think I went down and drove in to town.

Q. That is incident number three; let us go back to the hanging process?

A. I never knew of any.

Q. Did not you tell us about a man being with Big Harry out down in the barn?

A. Yes, sir.

Q. I thought it was a very pretty subject; didn't you say there was a rope there?

A. Yes, sir.

Q. Where was both ends of the rope?

A. Well, the rope was lying alongside of the man, I think.

814 Q. Who carried that rope there?

A. I do not know.

Q. Did you hear old Kemp testify here the other day?

A. I do not remember.

Q. What attracted your attention to that fracus?

A. I saw several men going there.

Q. Did you know what they were going there for?

A. I had expected that they had caught—

Q. Had been talking among the bosses, Bellinger and Big Harry—

A. No, I had given Big Harry instructions to catch this fellow.

Q. What did you have in your hand when you were going up there, didn't you carry some rope?

A. No, sir.

Q. How far did you precede Kemp?

A. I do not know—I do not remember Kemp.

Q. You do not remember seeing Kemp there at all?

A. No, sir.

Q. When you got there this fellow was on the floor?

A. Yes, sir.

Q. How was Big Harry, what was he doing?

A. I think he was down alongside of him holding him down.

Q. Did he have his hands on his arms?

A. No, sir.

Q. Was sort of a looking man was this fellow?

A. He was a fellow about twenty-two or twenty-four years of age; he had a week or two weeks' growth of whiskers.

Q. Was he not a small fellow about like Abraham?

A. He was taller than Abraham.

A. He was a smaller man than Trudich Mihaly?

A. He was not as stout?

815 Q. You are certain the rope was not around his neck?

A. It might be, but it didn't seem to me that it was.

Q. Was the other end of the rope over anything—what did you do with the lines that you carried up there?

A. I do not remember carrying up there; I carried the rope away from there.

Q. This fellow was praying like the devil when you got there?

A. I do not know.

Q. You had an interpreter there?

A. There was a man there who could speak to him.

Q. And he said that he would send to the old country and get five or six hundred dollars?

A. So this man said.

Q. How long after that was it that you heard of the man trying to commit suicide?

A. That afternon.

Q. It must have been a situation that he was not accustomed to, did he seem to be much frightened?

A. I could not say.

Q. Were you much interested, were you alarmed or not, or scared?

A. No, I do not know as I was.

Q. Did you get anything from that fellow?

A. Yes, sir.

A. What did you get?

A. Got two watches; one in particular I remember of.

Q. When did you first see the watches?

A. I think it was the fellow talking German, handed it to me.

Q. Did you see where this German got this watch from?

A. No, because he was searching him when I went in there; I did not see the articles taken off of his person.

816 Q. Do you know that any of the goods came off of that man?

A. Well, only from all of the other men around there; he admitted himself, that is, the interpreter said that he admitted taking the money and what was there.

Q. And did you ask him, you asked him, the interpreter, what he was saying?

A. Yes, sir.

Q. And he said he would send to the Old Country and get the money and be a faithful hand?

A. I do not remember that.

Q. You do not swear that he did not say that?

A. No, I will not swear, but I think if it had been said I would have remembered it.

Q. What was Big Harry saying when you walked in there?

A. I do not remember his saying anything.

Q. Didn't you hear the question of the rope being used?

A. No, sir; I think there was very little conversation carried on; I did not pay any attention—there was no conversation except between him and the interpreter.

Q. What did Harry say when he had that rope?

A. I do not remember if he said anything.

Q. Didn't you hear Harry say that he would throw that rope over the beam?

Q. No, sir; I do not think he said so.

Q. Then Kemp was lying?

A. I don't think so, if he said so he is lying, I am positive as to that.

Q. That negro, John Malone, do you remember him?

A. Yes, sir.

Q. How long have you been acquainted with him?

A. Two or three years.

817 Q. You first tackled him with a pistol you say, was it because he wanted to ride on the train?

A. It was because he had put the flagman all off.

Q. Let us get back to the original cause; they had prohibited him from riding?

A. Yes, sir; without a pass.

Q. That was between the hours of six in the morning and six in the afternoon?

A. It was about 12:55 in the day time.

Q. Now, we strike the fifth incident, I believe; when did you first hear that Mihaly had gone?

A. I think some time between eight and ten in the morning.

Q. How did you hear that? Was it a phone message?

A. No, Benderstock told me.

Q. Did he tell you that Mihaly had gotten five cents from him that morning?

A. He went on to explain and said he was gone; he could not explain very good.

Q. You did not hear anything was stolen then?

A. I did not understand very well then.

Q. Mihaly had gone?

A. He said that fellow had gone.

Q. Did he say anything about five cents that had been given him that morning?

A. Yes, sir.

Q. Now, had that fellow that Mihaly that day stolen anything from—

A. I did not understand what he said at that time; I went away and came back.

Q. What was your motive in going after Mihaly?

A. For stealing was my only motive.

Q. At the time you started after him had Benderstock told you that Mihaly had stolen anything?

818 A. I said I will see you at noon, and when I came home at noon, twelve o'clock, I understood him then that Mihaly had stolen clothes, described to me as his coat and some shirts.

Q. That was about noon?

A. About 12:30.

Q. Where did you pick up with your companion Grace?

A. I turned him over to Porter.

Q. Where was Porter.

A. He was around the camp.

Q. Had his office in that car?

A. Yes, sir.

Q. Where was Dr. Grace at that time?

A. Dr. Grace had been out there, I saw him about eleven o'clock.

Q. When did you see Grace again?

A. I saw him about two or three o'clock in the afternon.

Q. Where, at Lockhart?

A. No, sir.

Q. Where did you find Sandor?

A. He was with Dr. Grace.

Q. There around the camp?

A. No, they drove up in a buggy.

Q. Did they tell you where they were going?

A. Yes, sir.

Q. And what they were going for?

A. Yes, sir.

Q. What was it?

A. They told me they were going out to look for a fellow, at least Dr. Grace did, the fellow that had stolen the stuff.

Q. You had had no communication with either one?

A. No, sir.

819 Q. You do not know where they got the information?

A. I do not.

Q. Where was Benderstock all the morning?

A. I expect he was around the camp.

Q. You do not know that he had been to Lockhart?

A. No, sir.

Q. Did you hear Benderstock testify here?

A. Yes, sir.

Q. Did you hear him say that he had not told you this man had stolen those clothes, Mihaly, or any individual, had stolen clothes?

A. I did not.

Q. You did not hear him say he did not find out anything from Mihaly until the next day, when Mihaly was brought back; he didn't know that he had stolen them until Mihaly had admitted when he was brought back?

A. I do not know about that, but I know what he told me.

Q. You have probably forgotten what he testified?

A. I did not, I heard a part of it.

Q. This was the only man you consulted about this stealing, Benderstock, according to your authority, before you left there?

A. No, several of them were talking to him.

Q. Did you hear that old Colechaney was suspected of it?

A. I never did.

Q. You never heard of that?

A. No, sir.

Q. Tell us who else—had you talked to Barleycorn?

A. John Barleycorn; no, sir.

Q. You know who I am talking about, Colechaney, you know who I am talking about?

A. How could I talk to him?

820 Q. Didn't you say you often engaged them through an interpreter?

A. With Colechaney?

Q. When all this stealing was going on didn't you say you sometimes sent for an interpreter to come down?

A. Yes, sir.

Q. Didn't you have an interpreter that day?

A. Not until after we started after this fellow.

Q. Now, you say you met this fellow that you and Grace —you went first to see Atwell about it?

A. Yes, sir.

Q. Did you find Atwell?

A. I cannot say as to that.

Q. Did you see anybody else while you were inquiring for Atwell at Laurel Hill.

A. We stopped and talked to someone, I think Julius Rhodes.

Q. Did you give instructions about what to tell Atwell?

A. I might have.

Q. Do you remember what those instructions were?

A. No.

Q. You do not remember telling ——— to look for him on the train that night?

A. I may have said that, I don't remember.

Q. Did you inquire of any other person at Laurel Hill at that time?

A. No, Rhodes was the kind of sort of constable there.

Q. Do you know of any justice of the peace there?

A. Yes, sir.

Q. You are a man of affairs, you have been working labor, have been in different states I suppose, you are between 45 and 50 years old, you have had a good deal of experience with men?

821 A. Yes, sir.

Q. Don't you know that the proper thing to do was to make an affidavit against the man and arrest him? Don't you know that to be the first prerequisite to apprehend a man for stealing anything?

A. Yes, sir.

Q. Did you hunt for a justice of the peace that day?

A. No, sir.

Q. Now, you went on the Laurel Hill and Florala road?

A. Yes, sir.

Q. Where did you meet this fellow when he came up smiling that aternoon?

A. On the Laurel Hill and Florala road.

Q. Was it near anybody's house?

A. There was a house close by.

Q. Was there only one house?

A. Two.

Q. One on each side of the road?

A. Yes, sir.

Q. No, when you first saw the man you were busy at something else? Grace was sitting in the back of the buggy; was it raining?

A. No, sir.

Q. Grace was cleaning his revolver?

A. Yes, sir; wiping it off.

Q. Putting it in good condition?

A. Yes, sir.

Q. Was the road straight there?

A. I think it was.

Q. How close was this man to the horse or buggy when you first saw him?

822 A. I do not think he was over twenty feet.

Q. There was nothing in the road to obscure you, were you facing the direction that he was coming?

A. Yes, sir.

Q. And the first you saw of him he had a smile on?

A. Yes, sir.

Q. How much closer did you get before you got out of the buggy?

A. I did not get out of the buggy at that time.

Q. Who did get out?

A. Dr. Grace.

Q. What became of the man, what did the man do?

A. Dr. Grace came up alongside and stopped.

Q. Was Dr. Grace still wiping his revolver?

A. No.

Q. Did he have it in his hand?

A. Yes, sir.

Q. Did he take hold of the man?

A. He did, he put his hands here to see; I told him to see what the man had on, and as he did Mihaly grabbed him.

Q. This little fellow, who was recently smiling, grabbed Dr. Grace, and then it was that you got out of the buggy?

A. No, sir.

Q. How long after?

A. A few minutes afterwards?

Q. What did you get out for?

A. They had another scuffle?

Q. How large a man was Mihaly?

A. He would weigh a hundred and sixty-five pounds.

Q. Didn't you think Grace was able to take care of himself with a gun in his hand, in talking to that fellow?

A. I did not want him to have to use his gun.

Q. And this little Mihaly made a savage assault on Dr. Grace?

823 A. Not little Mihaly.

Q. He is as big a man as you are?

A. Yes, sir.

Q. And then it was that this man hit Grace, who had a gun in his hand, you cut him across the shoulder?

A. I never hit him.

Q. What did you hit him with, a whip?

A. I got hold of Grace.

Q. Then he changed his frowns into a smile?

A. I did not pay any particular attention to what he was doing.

Q. You got out to referee?

A. Not altogether.

Q. How many licks did you give him?

A. Two.

Q. Only two?

A. Only two.

Q. Did you see a little woman standing near by?

A. Not at that time.

Q. What did the man do then when you hit him the two licks.

A. He let go, I did not wait to see what he would next.

Q. Didn't Mihaly run backwards?

A. I do not think so.

Q. Now, while he was running backwards how many licks did you give him on the body?

A. I never hit him while he was running backwards.

Q. Did he ever run backwards?

A. I do not know, I hit him when he had hold—

Q. What was preventing you from seeing him?

A. Because when I hit him the horse started backing, and I turned around to get the horse.

Q. Who was in the buggy?

824 A. Mr. Sandor.

Q. Was he not able to hold the horse.

A. No, sir.

Q. How far when you started to get the horse, and the horse was making his disappearance, and it became necessary to go to the buggy?

A. He had never moved from the time I jumped out of the buggy over I suppose three or four feet from the time I hit him the two licks; I suppose the whipping scared the horse; the horse backed right up, and he kept backing up, and I ran, and by the time I got hold of the horse he had turned around.

Q. What became of Dr. Grace and the man?

A. I was not looking at the time.

Q. Did Dr. Grace have a revolver against him, presented at him?

A. While I was there?

Q. Yes, sir.

A. No, sir; not at any time.

Q. How long a time elapsed while you were fooling with the horse before you saw Grace and the man again?

A. Not over two minutes, may be a minute, a very short time.

Q. Grace brought the man back then?

A. No, sir.

Q. What did he do with him?

A. I did not know what he done with him while I was attending to the horse.

Q. When you got ready to go what became of Mihaly?

A. I got into the buggy, jumped in, and at the same time held the horse, he was trying to turn around.

Q. The horse was pretty badly excited?

A. He was a very excitable animal.

Q. Were the dogs much excited?

A. I do not know where they were.

825 Q. Were they barking around?

A. No, I was not paying any attention at all, I could not keep track of Mihalv. the dogs and Dr. Grace and the buggy all.

Q. You started back?

A. After I got in the buggy I saw the woman—

Q. Then it was you had the conversation?

A. Yes, sir.

Q. How many women were there?

A. There was two of them on one side.

Q. These were the women that you talked to?

A. Only one spoke.

Q. She seemed to be very much amused at it?

A. She did, certainly.

Q. She thought it was a good joke?

A. Yes, sir;. said it served him right, she laughed outright.

Q. Very much amused?

A. Appeared to be.

Q. You started back, how long did you walk alongside of the buggy ahead of the horse. [A.] I could not tell the distance, only a very short distance.

Q. You took him in the buggy?

A. I asked the doctor to get in the buggy.

Q. Did you see somebody coming down the road, meeting you?

A. No, not at that time.

Q. How far did you go before you saw somebody?

A. Not very far; probably twenty or thirty rods.

Q. You met two gentlemen in a buggy?

A. I think we met a man before we met them.

Q. You met another man?

A. Yes, sir.

Q. How far did you proceed before you met the two gentlemen in buggy?

A. I would not be positive; I remember meeting them; I do not remember the distance.

826 Q. When you were whipping Mihaly did you say anything to him about what you wanted with him?

A. I do not think I did; I do not think there would have been use.

Q. I am simply asking you; I will make my questions specific, and I want specific answers. You did not say anything about his having stolen anything.

A. I did not.

Q. Did you tell him anybody had missed any clothes then and there?

A. I could not.

Q. Did you know Sandor?

A. I did.

Q. He was a Hungarian speaking individual.

A. I did not know at that time.

Q. You did not know that Sandor could talk Hungarian?

A. I did not know what kind of a fellow Mihaly was?

Q. What did you take Sandor for?

A. To interpret for these fellows.

Q. I thought you had started out for Mihaly?

A. He came out to interpret at the camp.

Q. You took Sandor along to interpret, didn't you?

A. Not altogether.

Q. Didn't you know that this man that had done Mihaly, was a Hungarian?

A. No, sir; I did not know what he was.

Q. When did you first approach him on the subject of clothes stolen? When did you describe the clothes?

A. After we went about a mile; Sandor then found out we could talk with him.

Q. Explain to us, you are a pretty good actor, just the manner that Dr. Grace assumed when he got to the
827 man, just how long he had hold of the man before you got out of the buggy, and went to him, and what he was doing when you hit him the two licks?

A. Dr. Grace had got him here, and they were walking along together for the second time.

Q. The first time you met him at Pauls?

A. I was in the buggy and Dr. Grace was back of the buggy, and met the fellow about in front of the buggy.

Q. You were fronting the man?

A. Yes, sir.

Q. Just in front of the buggy.

A. Yes, sir; as we met him.

Q. Where Grace and the man met?

A. Yes, sir.

Q. Were you on the opposite side of the buggy from the man?

A. Yes, sir.

Q. To reach the man you had to go around the head of the horse?

A. I did not go.

Q. Did you get out?

A. I did not get out.

Q. You did not get out?

A. Not at that time?

Q. When did you get out of the buggy?

A. After the first occurrence they had walked up about twenty or thirty feet, probably a little further, in the direction of Florala, the way we were driving.

Q. The opposite direction from which the man was coming when you met him?

A. Yes sir; and they walked on and I drove the horse, and I told Doc to feel the man and see how much clothing he had on, to search him, because I understood the coat he had on was the one he had stolen.

828 Q. He did not have any coat on?

A. Not in the morning.

Q. Then they went back several feet?

A. Yes, sir; probably thirty feet.

Q. That was while you were down in front of Pauls, opposite her door?

A. No, we were getting down; we stopped I think.

Q. Then you went out to follow him up, didn't you?

A. We drove up—

Q. Did you get out of the buggy then?

A. They kept walking along, when the doctor caught him the second time to search him; he grabbed Doc with both hands that time, and I shouted, "let go," and I jumped out; Sandor was sitting on the left hand side and I jumped out, and they were about four or five feet from the horse, and I do not think I had taken one step from the time I jumped out and hit Mihaly.

Q. In the meantime there was considerable commotion?

A. Not very much.

Q. Was the man making any noise?

A. I do not remember that he was.

Q. Were you making any noise?

A. I told him to let go, to let go.

Q. Did you swear?

A. I don't think I did. I might have.

Q. Didn't you use any profanity?

A. I might have done so.

Q. Did Dr. Grace use any?

A. No.

Q. Was there any loud talking?

A. Yes, sir; I talked pretty loud when I told him to let go.

829 Q. Before Grace went round to the man did he have time to get away, did he try to run?

A. No, sir.

Q. What sort of licks were those you gave him?

A. I had a buggy whip, ordinary buggy whip, and struck him twice.

Q. Did the man dodge?

A. I struck right down this way.

Q. After you had left the buggy?

A. The second time he attempted to search him.

Q. You did not hit him from the buggy?

A. I did, I said I hit him, from the buggy.

Q. You mean to say you never hit him more than two licks?

A. I hit at him, but I hit Dr. Grace; that lick did not reach him.

Q. That was one lick then?

A. Yes, sir; that was number one, I intended, though, to hit him.

Q. You never gave him three licks?

A. My intentions was to hit him, but I did not.

Q. The man had nothing in his hand?

A. No, sir.

Q. You did not find anything on his person except his clothes?

A. We did not try to search him any more; I says we will take him back.

Q. You had no word on the way down for Atwell?

A. Yes, sir.

Q. At Laurel Hill?

A. Yes, sir.

Q. In going back did you look for Atwell?

A. We were going the other way; I thought I would take—on the first thought I thought I would take him to Florala and then before we got to Florala I commenced to think it was out of the State lines, it was over the State line, and then I started to drive to Paxton.

830 Q. Did you know that before you could arrest a man and take him into another State you needed a warrant?

A. Yes, sir.

Q. Then you knew to carry him over from Florida to Floala you needed some kind of authority from the Governor?

A. No, the interpreter had told me that he said he wanted to go back, he was willing to go back, and then I changed my mind.

Q. Then from where you took the man into the buggy was just as near or nearer by way of Laurel Hill than by Paxton?

A. I was going up to Florala.

Q. To go to Florala would you not have gone by Laurel Hill; is that the excuse you made.

A. It was nearer for us to cross there than to cross down at Laurel Hill.

Q. You knew that Laurel Hill was in Florida, and did you make any affidavit against him for an offense committed in Florida?

A. My idea was to take him home where we could have him closer for prosecution.

Q. Is Paxton right on the road?

A. No, sir.

Q. Why did you digress and go out there?

A. Because before we got there I decided it would be better not to take him out of Florida.

Q. You did go to Paxton?

A. Yes, sir.

Q. You did not stop there?

A. No.

Q. Then you were willing to compromise with him?

A. Yes, sir; the same as I done with others, if he would go back and face the others there.

831 Q. Did you have any justice of the peace in camp?

A. No, sir.

Q. How far was Paxton from Pauls?

A. I could not say, six or seven miles.

Q. How far was it from where you arrested the man to Laurel Hill?

A. Two or three miles.

Q. Laurel Hill was the nearest point, was it, did you stop in a saloon at Florala?

A. Yes, sir.

Q. Did you get cigars and a drink?

A. We got some cigars.

Q. You left the man in the buggy?

A. Yes, sir.

Q. Where was the man sitting?

A. In the back part of the buggy.

Q. Was he in any way fastened to the buggy?

A. No, sir.

Q. He was in no way tied?

A. No, sir.

Q. You are sure of that?

A. I am positive.

Q. Who stayed in the buggy while you and Grace went out to get the drink?

A. They all three of us went in and got a cigar.

Q. You are certain that Sandor, yourself and Grace went into the saloon at the same time?

A. Yes, sir.

Q. And came back at the same time and got into the buggy?

A. I think some of them went to some other place, some of the other stores.

832 Q. Was there any talk about it by any other people while you were there?

A. I do not remember.

Q. Was there any talk about the dogs?

A. There might have been.

Q. Do you remember with whom?

A. I do not remember anybody being present except—

Q. Do you know a man by the name of Wiggins?

A. I do?

Q. Was he present?

A. I do not remember, he might have been.

Q. Do you know a man by the name of Swilley?

A. No, sir.

Q. Was he present?

A. I do not know.

Q. When did the conversation take place between Sandor and Mihaly about stealing?

A. After we left this place about a mile, he talked with him, Hungarian or Slav, I think. I do not think it was Hungarian; he would not give him any satisfaction.

Q. Then you decided you would not carry him before an officer?

A. He did not say yes or no.

Q. He did not say whether he wanted to be taken before an officer or not?

A. No, sir.

Q. Then you simply exercised your own election without consulting him?

A. We did, at least Mr. Sandor asked him and he said he would go back to the mill, that he wanted to go back.

Q. And work?

A. He did not say.

833 Q. When you got back to Lockhart you took him in front of the office?

A. In front of the commissary.

Q. What was he conducted there for?

A. I tied the horse in front of the office, I left some one holding him.

Q. Did you untie the man there?
A. What man?
Q. Mihaly, did you let him get out of the buggy?
A. I did not let him out, he got out, there was no untying about it.
Q. Then Grace took him from there?
A. Grace did not take him.
Q. What did you have to hit him there for?
A. He was standing about—not talking to some Hungarians, and I spoke to him, and I called to him twice, and his back was to me, and I hit at him with the whip to call his attention, and he turned around and Dr. Grace then took him by the arm and motioned him to the back of the buggy in the same place.
Q. When was the last you saw him?
A. The last I saw of him I left him with Dr. Grace and Joe Benderstock going towards the camp; I did not go out.
Q. You met Benderstock there?
A. Yes, sir.
Q. You are certain you did not hit the man more than two licks?
A. I am positive I did not.
Q. You simply shoved him with the handle of the whip?
A. No, sir—he was about six feet; I called him twice, and he did not understand, and I hit him on the back with the whip, his back was turned.
Q. Do you know a man by the name of Will Sheehan?
A. What is his business?
834 Q. Newspaper man.
A. Montgomery Advertiser?
Q. Yes.
A. Yes.
Q. Did you see him at any time in Augusta?
A. I think I did.
Q. Did you meet him at the camps?
A. Yes, sir.
Q. What was his business?
A. Reporter from the Montgomery Advertiser.
Q. He was an Advertiser man?
A. I think so.
Q. You did not know what he was there for?
A. No.
Q. He did not tell you what he was there for?
A. He told me that he was connected with the Montgomery Advertiser.

Q. Did you have a conversation with him?

A. I did.

Q. Was it about the Maginnis business?

A. I think we had some conversation about it.

Q. Did you have any conversation about the Mihaly business?

A. We may have.

Q. Did you tell him about the Mihaly incident?

A. I do not remember, probably I did; I cannot tell you what I said, every word, I said to everybody.

Q. You say you went to Laurel Hill first and talked to Atwell?

A. I think we did.

Q. And you were on the road returning from Laurel Hill when you met Mihaly, you are sure of this?

835 A. I was on the road from Laurel Hill; we were going to Cowan's mill.

Q. You talked pretty freely with the Advertiser man about this thing?

A. I think we talked—

Q. Didn't you know, and didn't you understand from him at the time of this conversation that the purpose of his visit there was to get your side and Mr. Harlan's side and the company's side of these transactions?

A. I did not know what interest he wanted to get. He just introduced himself to me as being a reporter.

Q. Didn't you know then that he was a representative of the Montgomery Advertiser?

A. Yes, sir; I knew that he was a reporter?

Q. And didn't you know at the time of the conversation that you had with him that he had been requested to go down there by you or Mr. Harlan or some representative, at the request of the Jackson Lumber Company?

A. I did not.

Q. To give the side of the Jackson Lumber Company, of these transactions which had been misrepresented and mistreated in the Pensacola Journal.

A. I did not know that he had been requested by anybody.

Q. Now, I will read to you—it was early in August this man was there, where did you meet him first?

A. At the log camp.

Q. Did he come with Dr. Trammel?

A. Dr. Trammell was there at the time.

Q. This purports to be your interview with him in reference to the Maginnis incident—

836 "And the jiggers go down to Pensacola and say that I beat them," he said. "Well, aren't they the fine set of liars. That man Lambert takes the cake as the champion liar. Why the very day he says he was whipped, July 18, he worked all day firing on that engine over there. And he worked all day the next day, too. He says he was whipped on Friday, and every time card we keep shows that he was on the engine all that day and all the next day. Hike Hays, the engineer, knows that. Hey, Mike, come over here."

Mike Hayes. the angular Irish engineer, was called over and asked whether Lambert, who had fired for him three or four days, had been at work on the day on which he claimed he was whipped?

"I say now, said the engineer in a rich Tipperary brogue, he wurruked with me all that day. If he was given forty lashes he forgot to mention the fact. In fact he had no time to get whipped because he was on the engine all day except when he ate dinner. And he wurruked the next day on the engine, too, it being Saturday.

"And I say, too, he ran away that very night, he did. He wint to Florala with me on the engine and I missed him. Presently some wan came in; sez he, Mike, Harry Lambert says for you to go to hell. He'll never fire for you. He's going away from here, that's the missage he sent me, the sassy devil."

Mike's flagman, standing by, corroborated this. He, too, was with Lambert all day when he claimed to have been whipped.

In this affidavit swore the whipping was administered in camp by a man named Big Harry. This man, whose full name is Harry Halverson, so Gallagher and he himself testified, was away on a week's leave of absence and did not return to camp until the Wednesday following the Friday on which the whipping is alleged to have taken place.

"Now, this disposes of Lambert's collection of lies," said Foreman Gallagher. "The other charge is that I beat up the Hungarian Mihaly. One of the Hungarians came to me and told me that Mihaly, or whatever his name is, had
837 stolen some of his clothes and some little things
that he had in his grips. Since this gang had gotten into camp there had been a lot of stealing, but to give the devil his dies that Nowery crowd, I believe, did more of the stealing than any of the Hungarians. At any rate I set out with one of the men to tell Deputy Sheriff Atwell at Laurel

Hill to keep a look out for the Hungarian and to arrest him as he passed through Laurel Hill. As luck would have it, we ran on the Hungarian as we got into Laurel Hill. He tried to run away and we had to draw the buggy whip on him to stop him. While my man was searching him to see if he was armed the Hungarian started to fight. As I sat in the buggy I reached over and struck him twice with the whip while he was fighting.

"We brought him back to Paxton where we were going to turn him over to a justice of the peace, but he begged so hard to be carried back to camp and he promised to settle with the other Hungarian. Shortly after we got back to camp he ran away again and got to Pensacola.

"This talk about my beating up men in camp is all talk and popy cock. I haven't done any such thing. Another of those Hungarians is saying I beat him when he knows he is lying. This jigger lay around camp for six days and by dodging did not do a lick of work. Three other Hungarians were bunking in one of those turpentine shacks out there and while they were at work they complained that this jigger had been stealing their clothes and trinkets. One night I told Harry to slip over there and catch this thief of the Hungarian, as we saw him sneaking around the shack. When we caught him and searched him we found the other Hungarian's things on him. Well, we tied him up and were going to take him over to Florida, but the jigger got down on his knees and pawed my arm with his hand, begging to be let loose.

838 "After awhile I let him go and what does the scoundrel do but pretend to commit suicide. A negro comes by in half an hour and tells me there is a man lying in the pool trying to commit suicide. Well, he had jumped in and put everything under but his head and there he lay with his head on the bank and his body in two or three feet of water. We got him out of there and made him leave camp. Now, he says we beat him up. That is a fine lie.

"McGinnis got up there and swore I knocked him down and put a pistol in his face. I knocked him down all right, but I did not make any gun play with him. McGinnis was some sort of a scrapper on the East Side in New York. When I met the men in New Savannah McGinnis was bragging about whipping a man on board the vessel coming down. On the way over he did up one of the men on the car.

"The night the crowd got in camp I was about to get in my buggy. I heard a fuss down by the men's sleeping quarters. I found that McGinnis was cussing out the whole shooting match. I says: "What's the matter with you?'

"He says, 'I'm a white man and I'm not going to sleep in there with that d——d bunch of Polacks.'

"By that time there was five or six of that Bowery crowd standing around and I knew that I could not do anything with the gang unless I whipped this man that was looking for trouble.

"So I says to him: 'You are going to sleep right in there. You are not here to run the camp.'

"He pulls his little old dinky derby down over his eyes and says: "Why you—

"Well, I didn't let him get any further. The jigger was a bigger man than I am, but I loosed a half arm jolt and caught him in the jaw. He fell back into his gang, but came up again. This time I upper cut him under the heart and before he could get set on his pins I pushed a couple
839 of swings in his neck.

"Mr. McGinnis of the Bowery, New York, slept that night where I wanted him to sleep. And from then until the time he ran away, Mr. Gallagher, of Lockhart, Ala., never had any further trouble with Mr. McGinnis of New York City.

"After they had been there a couple of weeks, that New York bunch got to stealing, and we had to put on a watchman And then they go to Pensacola and swear we put on the watchman to keep them from running away. Why that bunch of Indians would slip up to Florala, tank up on mean whiskey and raise cain here in camp until somebody told them I was coming down the line.

"We had a Jew here named Sam Sherer, who had a couple of nice suits of clothes packed away in a grip; one a gray suit and the other a serge suit. Do you know we have evidence that that New York crowd stole the Jew's clothes and hiked out for Pensacola."

Q. Is that true or not?

A. I made a very short statement to Mr. Sheehan the same as I made here; I never used that language to Mr. Sheehan about the jigger and the jolts and uppercuts; I never said that, and there is a great deal in there that I did not say.

Q. Now, let us get down to the other?

A. It is a little colored—this thing.

Q. Did you tell him that?

A. Not that exact language.

Q. Did you tell him he ran away and came to Pensacola?

A. No, sir.

Q. Did you tell him the only licks you struck him were in the buggy?

A. I think so, when he tried to run away.

Q. At Laurel Hill?

A. After we got into Laurel Hill; I made a short
840 statement to Mr. Sheehan the same as I made here;
he took no notes; it was just a conversation.

Q. This Mihaly business and this fellow that came around afterwards; these were the only two fellows that you dealt with for stealing?

A. There were others.

Q. How did you deal with them?

A. Whity and Stony; Barley testified here the other day that two men were brought back, Whity and Stony, by Big Harry.

Q. What did you do with them,

A. Those two men were the men the watchman had been put here to watch over them; they were supposed to have taken those clothes, when I found out positively that it was these fellows that took the clothes it was eight o'clock in the morning; I sent Big Harry down to the railroad works where they were working to tell them to come up, and I told him to take them over to Florala and give them to the authorities. They talked to Big Harry and wanted to see me. They came into the office and I asked them in the first place what they had done it for, and they did not know anything about it; they denied everything.

Q. Did you tell them what you were going to do with them?

A. Finally they admitted to taking the clothing and I told them that I would not prosecute them if they went out and got the clothing and brought them and gave them to the men, then he gave away the whole thing about Maginnis stealing some shirts and other stuff, I kind of blamed him for taking a good deal more, Maginnis and Louis Abraham took a silk shirt—

Q. We have heard all that before—

A. No, sir; you have not from me; when he brought back the clothing, I told him, I says I ought to send you to Andalusia and lock you up, but I hate to see a young fel-
841 low like you in jail; now I will let you go this time;
he went out and I never saw him again, and Stony kept on at work.

Q. Did you whip either one of them?

A. No, sir.

Q. The only man you whipped or had any thing to do with whipping was the man in the barn, the fellow that stole the watches?

A. That was not in the barn.

Q. You admit that and Mihaly, was those the only two?

A. There was no whipping at all.

Q. Then Mihaly was the only man you have ever struck?

A. No, there were others.

Q. Had they been stealing?

A. I do not know as they had.

Q. I do not mean Maginnis and Jordsman, were there others besides them?

A. Yes, sir; there are others, very often men would come up there drunk—

Q. Did you whip him with a buggy whip?

A. No, sir.

Q. With a strap?

A. No, sir.

Q. What did you whip them with?

A. Nothing except my hand. One time I remember this Squarehead I threw a stick at him; I threw the stick I was walking with at him; that was the time I had the sore leg; he was one of those fellows butting into everything; he would be in the kitchen if I was out; he would go to the barn and you could not keep him from changing around, and going where you didn't want him to go.

Q. You simply threw the stick at him?

A. Yes, sir.

Q. That is all the whipping you ever gave him?

842 A. And another time I chased him, and he came after me and wanted to go with me—I had a bundle of sticks in my arm, was going to run out some railroad lines, and he came after me and wanted to go and help me, and I threw the bundle of sticks down and chased him back towards the camp.

Q. Was there anybody present besides Squarehead?

A. I do not remember.

Q. You never had any occasion to give him any side whispers?

A. No, sir.

Q. You were not whipping him for stealing?

A. I searched him one time for stealing.

Q. You did not whip him that time?

A. No, sir.

Q. You didn't find anything on him?

A. We did not.

Q. Well, now, I want you to think pretty fast and think over all the incidents, were there any others that you assisted in whipping with a strap or a whip and let us know who they were and who was present?

A. I never struck a man with a whip around that camp except Mihaly; I do not remember of ever striking a man with a strap.

Q. With a strap?

A. With a strap or a strip.

Q. Or, with lines or anything?

A. No, sir.

Q. Do you know Archie Bellinger?

A. I do.

Q. Do you know John Flosson—do you know Farlay?

A. I do.

Q. Who were they?

843 A. Farley was the man that drives the team.

Q. Were they bosses?

A. No, sir.

Q. You did not whip anybody when they were present?

A. I did not.

Q. Will you swear that you never did take down down anybody and whip them with a strap or a bugy whip other than those you have mentioned?

A. I have never that I remember of hit a man with a whip except Mihaly.

Q. Or with a strap?

A. Or it may have been—it has not been—it must have been some time ago if I did, and has escaped my memory.

Q. I am talking about July, I am asking about that, I am asking if you have whipped anybody besides people you mentioned in July?

A. In what way?

Q. With a buggy whip or a strap?

A. No, sir; I have not.

Q. You were there around the camps in July?

A. I was.

Q. As far as you know you were there on the twentieth, you do not remember being called in by parties named John Flosson or Farley to administer any licking to somebody?

A. No, sir; not at any time.

Q. When you got Mihaly back there did you allow him to go and search for the things that had been stolen?

A. I turned him over to the men who he stole the stuff from.

Q. You turned him over to Benderstock?

A. Yes, sir.

Q. How did Mihaly get down here—did he come
844 down on the trip with you from Savannah?

A. After that.

Q. He paid his transportation from New York to Lockhart—was that some of the money you deposited with the Old Domion [Dominion] Line?

A. No, sir; a different thing altogether.

Q. You say Mihaly did not get away and run down to Pensacola, that you brought him down here?

A. Yes, sir.

Q. You paid his fare?

A. Mr. Porter paid his fare; I was at DeFuniak that day; I had given instruction to Mr. Porter.

Q. You said on yesterday that you brought him of your own accord and paid his fare down here?

A. Yes, sir.

Q. Do you know whether that fare has been paid back?

A. No, sir; it was the company's money.

Q. Then you do not know whether the government has paid that fare back—has it been demanded by the company?

A. No, sir.

Q. Do you remember when Mr. Wolfe was up there?

A. Yes, sir.

Q. Did Mr. Wolfe directly and imperatively demand and require you to bring Mihaly down here?

A. I think he did; yes, sir.

Q. *And you promised to do so?

A. Yes, sir.

Q. Did he tell you what probably would be the result if you did not?

A. No, sir.

Q. Was anything said about the papers being
845 sent to Montgomery?

A. No, sir.

Q. We will come now to the foreigners, the other two you went after. How did you first get informed, get information that they were wanted back?

A. I did not get any information that they were wanted back at all.

Q. You had no information?

A. I got a telegram, it was stated to me by Mr. Porter or probably some of the cooks, some one around the office—

Q. About a telegram from Atwell?

A. Yes, sir.

Q. You started out then?

A. Yes, sir.

Q. You took Louis May the watchman there?

A. Yes, sir.

Q. Now, you went first to Laurel Hill didn't you?

A. Yes, sir.

Q. When you came upon this men you said you didn't think they were the men?

A. I said at first I did not think so, and then before we stopped and Atwell had got out of the buggy, I told him they were not.

Q. How did they appear when you first came upon them?

A. They had a little bundle.

Q. Were they very much excited?

A. Yes, sir.

Q. What use had you for your pistol in your hand at that time?

A. I did not have my pistol in my hand.

Q. Then Atwell has lied?

846 A. Atwell got the pistol from me as we left the buggy.

Q. Didn't he turn it over to you as you came up there?

A. Not until after he came over and put the pistol in the buggy.

Q. You did not know the men, you did not have any use for them, you did not think they were the men wanted for stealing?

A. No, sir.

Q. What were you searching them for?

A. Mr. Atwell made that remark to him; I do not know why he made it, and I did not really go to search him; I says have you got a gun there.

Q. Do not you think that was a foolish remark?

A. No. I said it in a kind of joking way.

Q. The man had made no demonstration?

A. No.

Q. He had made no effort to get a gun or make any fight?

A. Nothing at all whatever.

Q. And you had heard the conversation between him and Atwell?

A. I did not, they were out of my hearing.

Q. You carried them back at their request?

A. They came and the first one asked me how far it was to Pensacola, and I told him sixty miles.

Q. Did you know that they were some of the foreigners that belonged to Lockhart?

A. No, sir.

Q. Did they talk Hungarian?

A. One talked German and one a little English.

Q. You only had a one-horse buggy?

A. That is all.

847 Q. And you and these other men were in the buggy?

A. Not at that time.

Q. When you started back?

A. Yes, sir.

Q. You were then how far from Lockhart when you found these men?

A. I do not know how far.

Q. And you tell us and this jury that merely to accommodate these foreigners that you discommoded yourself and gave them room in your buggy and hauled them all the way back up there?

A. Yes, sir; I have hauled four men in that buggy back a dozen times.

Q. You were pretty accommodating at this time to these unknown foreigners?

A. Yes, sir; they said they wanted to go back and I gave them a ride back.

Q. Now, how far was that from Lockhart when you found these men?

A. I do not know the distance.

Q. How long did it take you to drive down there?

A. An hour or an hour and a half.

Q. How far was it from Campton?

A. I do not know.

Q. You have never been to Campton?

A. That was about the only time—I have traveled that road, but once or twice.

Q. Did you pass Dave Clary's still on the way down?

A. I do not remember the still.

Q. Did you pass his place, did you see Dave Clary that day?

A. I don't remember seeing Dave Clary that day.

Q. You do not remember seeing him and asking him if he had seen any men?

A. I do not remember him.

Q. What time did you find these men?

848 A. I could not say, it may have been two o'clock.

Q. When did you get back to Lockhart?

A. About seven o'clock that night. It may have been six miles below Laurel Hill, though I do not know.

Q. Can you give me a diagram about the road and about the place you overtook these fellows, and the route you took?

A. I could not give you exactly because that was my first trip.

Q. Do you know what road that was?

A. I don't know, it was a road leading out of Laurel Hill, probably towards Crestview.

Q. Have you been from Laurel Hill to Crestview?

A. On the train.

Q. Have you been on that road?

A. No, sir.

Q. Do you know what direction you were traveling?

A. Towards Crestview, I think.

Q. Was it not between Crestview and Laurel Hill where you came upon these two strangers?

A. Yes, sir.

Q. It took you about an hour to go back to Laurel Hill?

A. It took us two or three hours probably four hours, because the man had lost money—probably two hours or two and a half?

Q. You say you saw one of these men in Laurel Hill after that—when was that?

A. I could not say?

Q. It was the 21st of July you went down to get these men?

A. Yes, sir; I think that was the day.

Q. Two weeks afterwards you saw one of the men in Florala?

A. I do not know whether it was two weeks, it was some time later, because I remember—

Q. Do you remember when Mr. Wolfe was up

849 there—went up there after you all?

A. I do not know the date.

A. [Q.] You heard the testimony of John Atwell here didn't you?

A. I did, I heard it twice.

Q. Did you make any attempt to get these foreigners you last saw in Florala?

A. I did not, I never knew anything about this matter until—

Q. As a matter of fact, was it not after you had been down here that you saw this stranger in Florala this foreigner?

A. I do not think it was.

Q. You were down here about a week after you and Atwell took them back and you said yesterday that it was two weeks after that that you saw one of the fellows in Florala?

A. I did not say—

Q. Have you ever made any effort in search or ever looked for that man for any purpose?

A. I have not.

Q. You did not need him as a witness?

A. I could not find him, I did not think there was anything to this Richard Roe business.

Q. Didn't you hear Atwell testify in Court?

A. Yes, sir.

Q. I mean when you were here in August?

A. Yes, sir.

Q. You heard Atwell tell all about going down there and taking up this man, didn't you hear him testify?

A. I did, and that is why I thought I would not have any need for any Richard Roe witnesses.

850 Re-Direct Examination.

Q. Explain to the jury the transaction with this man Albert—William Albert?

A. William Albert had been working for me about a little over a year ago; Albert came to work for me a year ago last July, and worked two or three months and was discharged, and he went to another camp and was discharged from there, and he went to work somewhere else, and on the 22nd day of June he came into the office at the log camp and wanted to borrow fifteen dollars from me, and he told me that Bud Givens owed him sixty-six dollars and all he could get was fifteen, and he would get the money and pay me back, and would go to work and send for the money, and says I will also leave my suit case here and I told him I would see him down town that afternoon; and he told me he had seen Archie Bellinger, and that he wanted a job, and that Archie had promised him a job; well I did not want to give him a job under any consideration; but Archie had promised him, and that noon I went to town and he came along; I was at Dick Pentons and he asked me for ten dollars, and I went in and borrowed ten dollars from Dick Penton, and I gave him that ten dollars, and he told me in there that he would go to work,

and would get this money from Bud Givens; he said fifty dollars; and he came around and wanted to borrow some more, and then I borrowed five more and gave him, then in an hour I met his outside, and he asked me for some money; I think I had a dollar and seventy-five cents or two dollars in silver in my pocket, and I just dived down and gave it to him, and told him not to bother me any more. So he went away and I expected him to go to work. He asked me to pay an order to Dick Penton for me for the sum of sixteen or eighteen dollars, and he went away and did not go to work. I
851 was not at all particular about having that man work
any way, but he had beat me out of this money, and I got a warrant out for him for obtaining money under false pretenses. I think it ran along a couple of weeks; I told Moneiky a couple of times that he could get my buggy and go and get him back, and later Moneiky arrested him and brought him up, and I was standing on the street and he wanted to see me; I told him I did not want to talk to him; you have been beating me enough around here, so they took him off and locked him, and he sent for me one Monday and I went over on Monday, and talked to him through the bars there, and he wanted me to take him out; I told him to write Bud Givens and get Bud Givens to get him out, that I did not want him; on Tuesday I came over again; I wanted to see if Bud Givens had done anything about it, and he sent for me again on Tuesday, and I went down to the jail, and Moneiky, the sheriff, came along to take him out about the time I was down there, and he wanted me to take him out, to bail him out; I says no, you get Bud Givens; I am tired of fooling with you; and I turned away to go home, and he come over and got to talking again, and I went up and stood for his costs and everything; then some one mentioned about the contract, and I had him sign a contract, I think it was fifty-one dollars and eighty-five cents; well, he says he was going to the camp, and I give him another half dollar then, and he said he was going to the camp, and I told him he might ride over to Lockhart with me in the buggy, and he came to Lockhart with me, and I told him at that time I expected Mr. White would be going out to the camp with me, and that he could go as far as Lockhart and take the log train, but I am not positive whether he road out with me that day any further or not, but he came out there and worked, I do not know, two or ten days, and got five dollars more from me, and went to town and got
852 drunk and was arrested and put in jail, and I paid
another fine of seven dollars and a half. I took him

out to the camp, and phoned in, and he went to work again, and was taken sick, and I sent him to the hospital for three or four weeks; and I used to go down and see him and give him money to buy tobacco with, and I told him as soon as he was able to go he could go down and stay around the camp until he got able to go to work, and he came out and went to work three or four days after, and I think he worked four or five days, I told him not to do any heavy work, and he got into some loading work, and got sick again; I telephoned for the doctor and he got him straightened up again, and he worked four or five days, and on Saturday told me he wanted to work in the boarding house, and on Monday morning I went to look for him, and he was not there; and I went to town and met him and he came back and had a trunk full of whiskey when he struck camp, and he was whiskey sick; and I went in the car and told him you have got to get out and go to work; he says I am sick; I says you get your clothes out of here. I told him to go in camp no more to eat. When he got to town he got another drink and sent for me; I went away to Jacksonville and when I came back he was working on the streets with shackles on, and I went up to him, and told him I did not like to see him in that fix, and I told him I would pay him out, and he said he had only five or six days more and he did not want me to do it. And that was the last I had to do with him.

Q. No effort was ever made to bring Albert back although he was indebted to the company?

A. No, sir.

Q. You had nothing to do with Crum?

A. No, sir; I knew nothing about them.

Q. No Barsota?

853 A. No, sir.

Q. Do any of these men have anything to do—any of these defendants here, interpreters out there, have any connection with your business—I mean by that does Mr. Lemater, the foreman of the turpentine—

A. No, sir.

Q. Does Mr. Harlan?

A. No, sir; not any more—I am supposed to have the logs there as to what I do with the men, in one work or another, or anything like that—

Q. What you have done you have done on your own book, have you?—independently of any of these men?

A. Yes, sir.

Q. Are any of these men responsible for anything that you may have done in any way?

A. No, sir.

Q. Have they assisted you in carrying it out in any way?

A. No, sir.

Q. Have they encouraged you?

A. No, sir.

Q. You have done what you did entirely independent of them?

A. Yes, sir.

Q. You are responsible for the log camps out there?

Re-Cross Examination.

Q. You spoke of a contract that this man Albert made with you, have you got that contract?

A. No.

Q. Who was he to work for under that contract, it was a work contract?

854 A. Yes, sir.

Q. Who was he to work for under that contract?

A. For the company, he may have inserted that in it although I have not orders from the company to do it; I do not know what the contract was.

Q. Did you have any independent work outside of the work of the Jackson Lumber Company at that time?

A. Not at the present time; no.

Q. You were not employing laborers to work for you individually?

A. Not at that time; no.

Q. What amount was he to receive per day under that contract?

A. I do not think there was any statement; I think the contract said whatever the other men were paid for the same work; I paid him fifty dollars a month for loading.

Q. How long had you [he] been in jail before he [you] entered into this contract?

A. I think he was arrested on Sunday night.

Q. He was then in jail Sunday and Monday and on Tuesday you made the contract, I believe you say?

855 Thereupon the defendants called as a witness the defendant ARTHUR GEORGE BELLINGER, who being duly sworn testified as follows:

Direct Examination.

Q. What is your name?
A. Archie Bellinger.
Q. Give me your full name please?
A. Arthur George Bellinger.
Q. You are one of the defendants on trial in this case?
A. Yes, sir.
Q. Are you employed by the Jackson Lumber Company?
A. I am.
Q. How long have you been there?
A. Two years last Christmas.
Q. What is the nature of your employment?
A. Woods foreman.
Q. Where, at the logging camp or the turpentine camp?
A. The log camp.
Q. State exactly the nature of your duties as woods foreman?
A. To look after the loading of the logs and trains.
Q. Do you know Arthur Buckley?
A. Yes, sir.
Q. Narrate to the jury the transaction he has testified to with respect to your conduct towards him?
A. He says I whipped him.
Q. State to the jury the whole situation?
A. I do not know whether you would call it a whipping or not. I took up a stick and tried to run him away from there.
Q. Why?
A. Because he was carrying water for the men and bothering them.
Q. How do you know?
A. He would not let them work and I took the men off of him twice that same morning from whipping him. 856
Q. The men were jumping on him?
A. Yes, sir.
Q. And you took him away from them twice?
A. Yes, sir; and sent him away. I told him I would give him a new job. I got the water pail and gave it to another man and I picked up a stick and I says now you git.
Q. Is that the only person that you whipped there?

A. Yes, sir.

Q. That is the only act of violence you done to any of them?

A. Yes, sir.

Q. And that is the ony time you directed him to leave there?

A. That is all.

Q. Have you had any connection with anybody in bringing anybody back to the camps?

A. No, sir.

Q. Or in arresting anybody?

A. No, sir.

Q. You had nothing to do with that?

A. No, sir.

Cross Examination.

Q. Were you there in July?

A. Yes, sir.

Q. This last July?

A. Yes, sir.

Q. What were your duties?

A. Woods foreman.

Q. Do you stay around the camps any?

857 A. Only for meal time.

Q. Did you have anything with you?

A. No, I had nothing in the woods when I was working.

Q. Where were you at work?

A. I did not work; I showed them what to do.

Q. You were simply boss to go along with them?

A. I only went along to show them what to do.

Q. What instructions did you have if any of your men tried to get away out in the woods?

A. I never had any.

Q. Don't you know what your duty was?

A. I suppose to let them go if they wanted to go.

Q. Didn't you know that they were indebted to the company?

A. No.

Q. You did not know anything about that?

A. No, I had nothing to do with that.

Q. The only one you ever struck was Arthur Buckley?

A. Yes, sir.

Q. You swear to that?

A. Yes, sir.

Q. Did you ever hold any one for some one else to whip?

A. No, sir.

Q. Do you know Squarehead?

A. I do not think I do.

Q. You never heard of Squarehead. Did you ever hold him for any [one] else to whip him?

A. No, sir.

Q. Did you know lazy John Foster?

A. Yes, sir.

Q. You were a pretty good friend of John Foster's?

A. I guess so as far as I know.

858 Q. Did you ever have any conversation up there after this thing occurred down here about these cases; did you and Foster talk over these conditions and what was done to the men there?

A. Not that I remember of.

Q. Did you ever tell him that you had instructions when you had these men out in the woods at work or rather crews around the place where they slept to shoot to kill?

A. No, sir; I never made any such statement.

Q. If they tried to get away?

A. No, sir.

Q. Did you ever get Big Harry to hold a man while you whipped him?

A. No, sir.

Q. Do you know Ollie?

A. Yes, sir.

Q. What is his other name?

A. Eldridge I think.

Q. Do you know Florie?

A. No, sir.

Q. Did you know the teamsters about there?

A. Yes, sir.

Q. Was Florie a teamster about there?

A. I do not know him.

Q. Do you know Gallagher?

A. Yes, sir.

Q. Did you ever assist Gallagher with these other men there in whipping a man?

A. No, sir.

Q. Did Harry ever hold Squarehead while you put it on him?

A. No, sir.

Q. In the month of July?

A. No, sir.

859 Q. You are sure of that?

A. Yes, sir.

Q. You swear that?

A. Yes, sir.

Q. You are positive about that as you are that you never helped the other fellows whip that man—Gallagher and that crowd?

A. Yes, sir.

Thereupon the defendants called as a witness the defendant HARRY HALVERSON, who being duly sworn testified as folows:

Direct Examination.

Q. What is your name?

A. Harry Halverson.

Q. Are you the one they call Big Harry?

A. Yes, sir.

Q. Are you employed by the Jackson Lumber Company?

A. Yes, sir.

Q. How long have you been employed there?

A. Since about the middle of May.

Q. Where did you come from?

A. I come from the State of Wisconsin and Texas over there.

Q. You came down with a crowd that came down there?

A. No, sir.

Q. Have you ever been a foreman or a boss out there?

A. No, sir.

860 Q. You are an ordinary laborer like the rest of them?

A. Yes, sir.

Q. Were you ever on watch at any time out at the camps?

A. Yes, sir.

Q. When?

A. I cannot exactly state when. I have been—I have taken the regular watchman's place several times and I have been put on as extra watchman for a couple of nights.

Q. Why were you put on there as an extra watchman?

A. For some stealing that had been done out there.

Q. Do you know about when that was that you were extra watchman?

A. No, I do not know. I think it was about the fifteenth or the sixteenth of July.

Q. What were your instructions?

A. There was a couple of men suspected of having done some stealing and I was to watch this car they was in to see whether they left that night and to see where they went that night to get the stuff. They were supposed to have taken it and hidden it the day or night previous.

Q. Did you locate anybody?

A. No, sir; they did not leave the cars, or if they did I did not see them.

Q. Were you armed while you were going about the men?

A. No, sir.

Q. And you were only on duty for two nights in that capacity?

A. Yes, sir.

Q. Now, the regular watchman was Mr. May and he would go away sometimes and get you to take his place as watchman there to arouse the men in the morning and to fire the engines?

A. Yes, sir.

861 Q. Did you ever hold anybody there for anybody to whip them?

A. No, sir.

Q. Did you ever whip anybody yourself?

A. No, sir.

Q. What about this transaction that occurred there where you swung somebody up by the neck that Mr. Kempt testified to down in the barn?

A. Well, that was about a man that was supposed to have done—I do not know whether he had done any stealing or not but he was supposed to have done so—I was at the shop and I was supposed to see anybody that went to this particular shanty or shack and to go over there and see what would be doing and this man came over from behind the barn and went over—this man had been in the shop in the forenoon and had taken a revolver apart in the vice and I noticed this and I reported it and I thought this man had taken the revolver and things. So a little while afterwards they told me to go over there and see what he was doing at the shack and I went over there and at that time when I stepped in there he was opening a satchel and I went in there and I believe Ollie Eldridge or some of the boys came in at the back door of the shack and I caught this fellow and held him and put him down on the floor and I says I guess this man got something out of that satchel and we took and searched him. There was also a fellow sleeping in the bunk at the time, a Hungarian, who talked some German and we asked we asked him what he was

skipping around in there for and this Hungarian indicated the best he could—I guess he made me understand the best way he could and this young German and I believe about that time Mr. Clausen had come over too and he done some interpreting and I think Archie Bellinger also came over about the same time and Archie Bellinger went through his pockets and found two watches and $2.60 in money and a
862 ring and I do not know whether anything else or not—

Q. That was taken off of him?

A. Yes. sir. I was holding him on the floor at the time and then I asked Clausen to ask him what he done with the revolver he had taken a part in the blacksmith shop and they had some trouble in making him understand and at last he told them he had put it out on the outside of the shanty underneath and put a board or a rock over it and I went out there and found the revolver and it was taken apart and tied up in a red handkerchief.

Q. Whose revolver was it?

A. I have heard afterwards that it was a man by the name of Everett—

Q. The young man that testified on the stand?

A. Yes, sir.

Q. Had that man ever worked in the camp that you know of?

A. He had been around the camps there a good while; I do not know whether he had ever done any work.

Q. He was not under contract with the company?

A. I do not know anything about that.

Q. Now, then, did Mr. Gallagher have anything to do with that man being searched?

A. No. He says to let him up after we got all. Well, some one said something about his having taken something else and I think Mr. Gallagher accused him of taking something else and somebodd told Clausen to tell him if he did not tell where evreything was why they would put him in jail and he again pleaded that if they would not put him in jail he would send to the old country and get two hundred dollars and fix that up all right and Mr. Gallagher says let the fellow up, let him go anyway, I guess he is crazy, or something to that effect. That was all that was done to him.

Q. Did you hear anything about his remaining
863 there and doing work for the company?

A. No, sir.

Q. Do you know anything about this Stoney transaction and the other man that was with Stoney?

A. These were the two men that I was supposed to watch that night around the cars and the next morning about nine o'clock Mr. Gallagher told me to go down to the works and tell them he wanted to see Stoney and Whitey and to come up to the office he wanted to see them. I went down there and told them this and I happened to come back with them, I and another fellow.

Q. They were not brought back from anywhere were they?

A. No, sir.

Q. You just simply went down to one place and told them to come to another place?

A. Yes, sir; they were in the car talking to Bob.

Q. What car?

A. I went into the office and these fellows were in there and Bob was talking to them and asked them what they had done with the stuff that they had taken and they would not admit taking it and did not know anything about it and he says kind of look out for them, you two fellows go with Harry into the yard and I will have the constable to look after you and he says you fellows can go outside now and he rang the telephone and I went outside and spoke to them. I says now this matter looks pretty bad and if you know anything about where the clothes are I says I am a pretty good friend of Mr. Gallagher and if you say where these things are and tell me where they are and will bring them forth why I will see Mr. Gallagher that he does not have you arrested. If you get arrested in this part of the country you are likely to get two or three years for offenses of that kind. Whitey
364 says I know where they are and they had a quiet
argument between themselves and I says all right if you show me where the stuff is I will go and see Mr. Gallagher about it and I went in and took them with me and I talked with Mr. Gallagher to one side and told him about this and he says all right get the stuff and I won't prosecute you and so I went with them and went down into the spring head and they got the clothes and ticket I think was in the clothes and brought it back to the office again and Gallagher says all right I won't do anything about this to you and both went back to work again and Stoney worked up until pay day after that. I do not know how long Whitey worked after that.

Q. You had nothing to do with bringing anybody back?

A. No, sir.

Q. You knew nothing about it?

A. No, sir.

Q. Then you had several jobs while you were up there?

A. Yes, sir.

Q. You were not only watchman, not only looking after the men but you were a detective. Were these the only men you ever followed up as a detective?

A. Yes, sir. There was Squarehead. I went over and caught him one time—that is skipping around the bunks and held him and another fellow him and I searched him but he did not have anything but four or five pairs of pants on.

Q. That is what Squarehead was whipped for?

A. I did not know that he was ever whipped.

Q. Did you testify here two weeks ago?

865 A. Yes, sir.

Q. Didn't you tell us then that Squarehead was whipped?

A. No, sir.

Q. What was done with the two foreigners when you informed on them and told Gallagher what you had been able to pry out of them?

A. They came with me and went down and got the package they had these clothes in.

Q. Didn't you have a sort of mock trial?

A. No, sir.

Q. Didn't you have a court-martial?

A. No, sir.

Q. Were they not sentenced by Gallagher to six months on the road?

A. No, sir; not to my knowledge.

Q. You never heard of that before?

A. No, sir.

Q. How come you to be talking about it up there?

A. I do not know that anybody talked about it.

Q. Didn't you tell old Foster about these fellows having a trial and that this sentence had been passed on them?

A. I do not think I did.

Q. You won't be positive?

A. I am quite positive.

Q. You and Foster were pretty good friends were you?

A. Yes, sir.

Q. You talked to him a good many times?

A. Yes, sir.

Q. Have you not talked about these things and all the occurrences since the first case down here in August?

A. No I do not think I have.

Q. Where is Angelo?

866 A. I could not tell you. Angelo left it must be two months ago.

Q. That long ago do you think?

A. I do not know.

Q. Are you a pretty good friend of Angelo's?

A. He used to shave me and the like of that.

Q. Do you know what he left for?

A. He said he didn't like—I guess he and Mr. Gallagher had some rumpus about him bringing men in before twelve o'clock—fifteen minutes to twelve and bringing them in an hour earlier at night and I guess Mr. Gallagher said something to him.

Q. Didn't he get to be pretty mouthy and threatened a good deal before he left?

A, Not to my knowledge.

Q. Don't you know that he was talking it around there that if he did not get satisfaction there he would tell something down here if he was brought here?

A. I never heard it.

Q. Did you ever tell Foster that you heard him say that?

A. No, sir.

Q. Now, was there any other time that you ever had anything to do with Squarehead except the time when you found so many breeches on him?

A. That is the only time.

Q. About the only offense was that he had on too many breeches?

A. Just a mistake on our part in taking him and searching him. We thought he had been stealing and he had not.

Q. What was he whipped for?

A. I do not know anything about that. That is something new to me.

867 Q. Did you never have to hold him or help to hold him while somebody—

A. No, sir; the only time I ever held him was when we caught him in the car and took and unbuttoned his breeches and all we found was four breeches.

Q. You did not hold him for Mr. Bellinger then?

A. No, sir. I never held him for Mr. Bellinger.

Q. In some of your talks with Foster—you and Foster never had any difficulty up there?

A. No, sir.

Q. He has got nothing against you?

A. No, sir; nor I against him.

Q. Didn't you tell Foster one time in one of your talkative moods when things were being discussed that you hated like the devil to hold Squarehead while Bellinger beat him?

A. No, sir; but I told him the time I held him that I was sorry that I had handled him in that way, his arms were all sore from the sun burn and my catching him by the arms like this pulled some of the skin and stretched the skin and it cracked in several places and bled and I was sorry for doing that.

Q. Well, now, Harry, when did you recall the circumstances about this barn up there where this man you could not understand was whipped?

A. That did not occur in the barn.

Q. Where did it occur?

A. In the shed or shack.

Q. Where you kept the harness?

A. No, sir.

Q. You remember very distinctly don't you what you did do—that you held this fellow down?

A. Yes, sir.

868 Q. And Gallagher was around there?

A. Yes, sir.

Q. You remember the circumstances about the rope?

A. No, I do not know of any rope.

Q. Don't you remember about the time the fellow was praying or just before you told somebody to throw the rope over your head?

A. No, sir.

Q. You testified here two weeks ago?

A. Yes, sir.

Q. You didn't then remember a thing about this?

A. Yes, sir. It is the way you asked me the question.

Q. Did that make you forget it?

A. Well the way you asked me the question I answered no, didn't I?

Q. Yes, that is my recollection.

A. Well, will you repeat that question?

Q. What I asked you just now?

A. No, the other week.

Q. I asked you then about this circumstances, about the fact that this man you held, the man down in the barn about the man's praying. Gallagher being present and about the rope and you did not remember a thing about it?

A. And you said it happened in the barn and a man by the name of Kemp—

Q. And that is the only reason you recall it. Did I ask you if you saw old man Kemp there?

A. Yes, sir.

Q. And I asked you what time of day it was and if Gallagher was present and what the man said he would do and all about it and about the fact that you were holding the man down—

A. You asked me if I was not present at the time of holding the man in the barn and whipping him and giv-
869 ing him a six months' sentence on the railroad and having a noose around his neck?

Q. Because I did not ask you—because it did not occur in the barn you did not remember it?

A. I did not say whether I remembered it or not. I said no sir.

Q. Didn't I ask you the other question, did you ever while up there in the month of July or subsequent to that time ever assist in holding a man while he was being whipped by anybody?

A. I think you did.

Q. Do you remember what your answer was?

A. I don't that you did.

Q. At the time you went on as watchman—at the time you were put on there, did you watch the same cars as he did?

A. No, sir.

Q. Which other cars?

A. This was the car—there was two different sets of cars and this one man I was supposed to watch was the car that Whitey was in.

Q. That was about the time of the stealing?

A. Yes, sir.

Q. Do you remember what time in July that was?

A. As near as I remember I believe that I left for South Florida about the seventeenth of July and this happened the day before I left, on the seventeenth.

Q. Did you carry a lantern at night?

A. No, sir.

Q. What kind of a gun did you carry?

A. No gun.

Q. At no time?

A. No, sir.

Q. You never had one on you at night when you were watching the two nights?

870 A. No, sir.

Q. Are you certain that you were not watchman for more than two nights?

A. Extra watchman?

Q. Yes?

A. No, sir; not more than that at most I think.

Q. What was your general job?

A. Well, since about the—

Q. In July?

A. Since the first of July, about that time I have been car repairer.

Q. In the month of July?

A. I was working at repairing cars.

Q. Then you did not have occasion to go into the woods?

A. No, sir.

Q. Did you have charge or control over any men at all.

A. No, sir.

Q. You did not?

A. No, sir.

Q. Now, was Arthur Buckley working around the same log camps you were?

A. For a while.

Q. Did you ever have anything to do with him?

A. No, sir.

Q. Did you ever help to lick him?

A. No, sir.

Q. What time did he leave your camps?

A. I do not know for sure.

Q. You do not know where he went?

A. It may have been the latter part of July or the first part of August. I am not sure.

871 Q. When you were there as watchman didn't you in fact have a rifle?

A. No, sir.

Q. Didn't you have use for a gun when you were acting the part of a detective?

A. No, sir.

Q. I believe you said you never saw any guns on any of the bosses around there?

A. No, sir.

Q. Did you see Lamata pretty often?

A. No, not very often.

Q. You never had occasion to go to his camps?

A. I have been over at his camps; yes, sir.

Q. You saw Gallagher pretty often didn't you?

A. Yes, sir.

Q. And you never saw him with a gun?

A. No, sir.

Q. You never saw Gallagher with a gun?

A. No, sir.

Q. Didn't Gallagher work in the same camp with you?

A. Yes, sir.

Q. And you did not see him with a gun?

A. No, sir.

Q. They did not have any use for guns?

A. If they had guns they had them so I could not see them very well.

Q. In the summer time?

A. Yes, sir.

Re-Direct Examination.

872 Q. Mr. Sheppard asked you if you were present at the time that Mr. Gallagher threw a rope over the barn and hung up a fellow and whipped him; tell us about that circumstance.

A. He asked me if I was in the harness shop behind the barn and helped hold a man that Mr. Gallagher was whipping and give him a sentence of six months on the railroad and also had a rope around his neck and was going to hang him and I said no.

Q. And he also asked you if you were present when they were trying the man and you said no?

A. No, sir.

Q. You have never been present and know nothing about it?

A. I know nothing about anybody being tried in any way.

Thereupon the defendant W. E. GRACE was called and being duly sworn, testified as follows:

Direct Examination.

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. Are you engaged with the Jackson Lumber Company?

A. Yes, sir.

Q. What is your business?

A. Veterinary surgeon.

Q. Have you been foreman over any of the men out there?

A. No, sir.

Q. Or boss?

A. I have charge of the stable at Lockhart.

Q. You have nothing to do with the laboring men outside of the stable department?

A. No, sir.

Q. How long have you been there?

873 A. A year the tenth of last June.

Q. You were with Mr. Gallagher and Mr. Sandor when they went after this man Mihaley were you not?

A. Yes, sir.

Q. What led you to go with Mr. Gallagher?

A. They telephoned from the camp to the office to come out

Q. They telephoned from the log camp into the office at Lockhart for you to come out?

A. Yes, sir.

Q. To go where?

A. To come to the camp.

Q. Did you go?

A. I did.

Q. Had you before receiving that had any conversation with Mr. Benderstock?

A. Yes, sir.

Q. What was it?

A. I left there about ten o'clock and he was standing alongside the road and motioned for me to stop. I was driving and I stopped and he and John Kolechaney they came up to the buggy and explained to me that somebody had stolen a coat and a couple of shirts and also that the way I understood it John Kolechaney had given him some money to get some tobacco. I did not have time to fool with it and I told them I thought it would be all right and left them and went to Lockhart and when I got in there and put my horse in the stable I got back to the office about noon and when I went in the office the operator met me and told me that he had just received a message from the camp to come out there and told me that somebody had stolen some clothing and they wanted me to come out there to assist in locating the party—that he had skipped out.

874 Q. Well, then, did you go?

A. Yes, sir; I went back to the barn and the boy had not taken the horse entirely out of the rig and I told him not to unhitch him that I wanted to use him and I got in the buggy and drove up to the office and Mr. Sandor came out of the office and asked me if I was going out and I told him yes and he said he would go with me. We got in the buggy and I stopped at Mr. Harlan's on the way out and got three fox hounds and took them out with me and got to the camp and got Gallagher—he was standing in the road with his horse and buggy standing alongside the road and I got into his buggy and we drove up to the turpentine quarters about a quarter of a mile from there. We left that rig there and all got into Mr. Gallagher's buggy and started out and stopped—it started to rain when we got about a mile and I got in front and when we started I was sitting in the back of the buggy and we stopped at a farm house until the shower was over and then went on down to Laurel Hill and stopped at Jeb Howell's. His wife was standing in the door and I asked for him and she said he was not there and a little while—we went a block further and a gentleman came out of the road—Mr. Rhodes came out and spoke to Mr. Gallagher and then we drove on probably a mile or a mile and a quarter further and Mr. Gallagher was talking to me—he did not see this party when we came up there—I was sitting in the back of the buggy cleaning a gun—it had gotten all wet and I was wiping it off with a handkerchief and Mr. Gallagher said I believe here he is now so I jumped out of the back of the rig and ran around and walked up to him and took hold of his arm to see what clothes he had on and as I did so he took hold of my arm and Mr. Gallagher reached over and hit at him with the whip and hit me on the head.

Q. Where was Mr. Gallagher then?

A. In the buggy.

Q. Go on?

875 A. The horse as he slapped him with the whip or hit me rather jumped and I walked on to get out of the way of the horse and got a little ways further

and Mr. Gallagher says search him again and see what clothes he has got on and I started to and he grabbed me again and Mr. Gallagher jumped out of his buggy and come up and hit him twice with the whip and told him to let go and as he did I said watch the horse he is backing up there and he turned and went to the horse and I started with him and went down the road a little ways and he drove up and says you had better get in, you can all ride in here and motioned to me to get in the buggy and I got in the buggy and we drove on through to Paxton. On the way Mr. Gallagher told Mr. Sandor to ask him what he had done with the clothing. I believe Mr. Sandor could not understand much, he did not talk the language very well but Mr. Sandor said he would go back, he had them and would give them up. Mr. Gallagher told him to ask him if he wanted to be turned over to the authorities and he said he did not, he would go back, and then we went through Paxton to Florala and stopped at Sheppard's bar at Florala and all got out of the buggy except the Hungarian and we drove on to Lockhart. We stopped there and all got out of the buggy and I was ready to go, but this fellow stood talking to half a dozen around there. I was driving the horse and I sat in the middle and Joe Benderstock was on one side of me and Mr. Gallagher on the other. He looked around to see if he was in and was ready to start and he spoke to him and he did not pay any attention to him and he was talking to the other fellows and he took the whip out of the socket and tapped him on the back and told him to get in—that we were ready to go and then he kept on and then I jumped out and caught hold of his arm and told him to get in the back of the buggy and he did and we went over to Mr. Harlan's and Mr. Gallagher got out there and Benderstock and I went on with the fellow to camp.

876 Q. Did Mr. Sandor have anything to do with arresting this man or taking him into custody or anything of that kind?

A. No, sir.

Q. Do you know why Sandor went along?

A. Merely to interpret. We knew he was a foreigner and probably would need his assistance after we got him I suppose to explain the matter.

Q. You say that Mr. Gallagher got out at Mr. Harlan's office or at the house?

A. At the house.

Q. You had no interest in bringing the men back here to keep their contracts?

A. No, sir.

Q. You had nothing to do with anything of that kind?

A. No, sir.

Q. The only reason you went along was because you had been advised that this man had stolen these things and you were requested to go?

A. Yes, sir.

Q. And it was not a part of your duty to bring men back there?

A. No, sir.

Q. Did you have any understanding with any body that you were to assist in bringing men back there?

A. No, sir.

Q. About how far is it from Laurel Hill straight to the camps the way you fellows rode?

A. Seven miles.

Q. How far did you go to go by Paxton?

A. Well, to go by Paxton to the camp?

Q. Yes, sir?

A. Five miles from Lockhart to the camp and
877 three miles from Lockhart to Paxton and it must be
nine miles from Laurel Hill to Paxton.

Q. You traveled in order to go by Paxton anywhere from fifteen to seventeen miles—I mean to get back to the camp?

A. Yes, sir.

Q. And you could have gone straight?

A. Yes, sir.

Q. Did you have any other reason or thing that would have lead you to go by Paxton than the fact of going by there to make an affidavit?

A. I do not think it was the intention in the first place to take him to camp after we got him.

Q. Where were you going to carry him?

A. To Paxton.

Q. You did not start out with the intention of returning him to the log camp but simply to prefer charges against him?

A. Yes, sir.

Q. It was nearer from Paxton but you did not have Benderstock with you?

A. No, sir.

Q. It would be nearer from Paxton to get the witnesses down to Paxton from where they were than it would to get them down to Laurel Hill?

A. Yes, sir.

Q. Where were you when you got the phone message?

A. In the office.

Q. Whose office?

878 A. Jackson Lumber Company.

Q. Who was there then?

A. Mr. Sandor.

Q. Nobody else?

A. I do not recollect anybody else. It was right at the noon hour.

Q. Did you see Mr. Harlan about that time?

A. No, sir.

Q. A little before that time?

A. No, sir; do not recollect of seeing him that day. I went out to the camp early that morning.

Q. You had returned to the camp before you got this message?

A. Yes, sir.

Q. You had brought Benderstock with you?

A. No, sir.

Q. Where was Benderstock?

A. He was at camp. He was the first to tell me about it but I paid but little attention to it then.

Q. When you got ready to go you went to the camp?

A. Yes, sir.

Q. Was that camp then on your direction towards Laurel Hill?

A. Yes, sir; you can go that way.

Q. Did you go that way that day?

A. Yes, sir.

Q. When you got down there then you picked up Gallagher?

A. Yes, sir.

Q. You had phoned him you were coming?

A. No, sir.

Q. Could not Benderstock speak Hungarian?

A. Yes, sir.

Q. Could you understand Benderstock?

A. Well, yes, what I could understand in English what little he could speak. It was very poor. 879

Q. You understood that he was the man that had lost the clothing?

A. Yes, sir.

Q. Did you know the man that he was accusing or had said was the man that had stolen his clothes?

A. I knew him when I saw him in the road.

Q. How did you know him?

A. I brought him down the day before.

Q. From where?

A. I had brought them from Savannah.

Q. Had you had any description of him before?

A. No.

Q. You knew he was the man that had disappeared?

A. Yes, sir; he tried to explain to me before I left Lockhart, he says you know the fellow that was with me a good deal down in the car, he was quite chummy with me coming down.

Q. You went then to Laurel Hill—you went to Jeb Howell's house?

A. Yes, sir.

Q. And asked for Jeb Howell?

A. Yes, sir.

Q. What did you want with him?

A. I had a little shoeing to do at Lockhart.

Q. Horse shoeing?

A. Yes, sir.

Q. You did not ask him anything about the man?

A. No, sir; did not see him.

Q. Then you went on how far from Laurel Hill before you met this man?

A. It is a mile and a quarter.

Q. Near an old lady's house?

880 A. Yes, sir.

Q. Did you see that old lady that day?

A. No, sir.

Q. You did not see anybody?

A. No, sir.

Q. Now, you took him and went back—you passed through Laurel Hill did you going back?

A. We had gone through Laurel Hill before we run up on him.

Q. You were on your way then back to Florala?

A. Paxton.

Q. I mean before you met the man, which direction were you going when you met the man?

A. Going in the direction of Florala and Paxton—both almost in the same direction.

Q. Well, now, you went to Paxton?

A. Yes, sir.

Q. Well, then diddn't you have to go out of your way to go to Florala?

A. By going to Paxton?

Q. Yes, sir?

A. Yes, sir.

Q. You went through Florala?

A. Yes, sir.

Q. Now you say you stopped there and got whiskey and cigars?

A. We stopped there and got cigars.

Q. And then went right straight on to Lockhart?

A. Yes, sir.

Q. And you said you carried the man up in front of Mr. Harlan's house?

A. Yes, sir.

881 Q. And it was there that this crowd collected or not?

A. We stopped first at the commissary.

Q. I understood you to say that where Gallagher gave him the little lick and he got in the buggy was in front of Mr. Harlan's house?

A. No, in front of the commissary.

Q. Then you found Benderstock again?

A. Benderstock was standing there when we drove up.

Q. What did you go up to Mr. Harlan's for?

A. Mr. Gallagher wanted to see him on some business. He stayed there.

Q. Now, did Benderstock say anything about this being the man?

A. Yes, sir.

Q. He did?

A. Yes, sir.

Q. Did you hear Benderstock testify here?

A. Yes, sir.

Q. Now, you carried him on back to the camp did you?

A. Yes, sir.

Q. Where did you put him that night?

A. I do not know. I left him there eating supper. I ate supper with them and he was setting in there when I started home.

Q. How much of a furor was there when you met this man?

A. None.

Q. All that frightened the horse was the lick that you got?

A. In the first place; yes, sir.

Q. Any swearing? Was there any noise?

A. I did not hear any.

Q. How far were you from the woman's house?

A. It must have been sixty feet, I guess.

882 Q. Was that all the searching you done to feel to see how many shirts and trousers he had on?

A. I undertook to search him twice.

Q. And he resisted manfully both times?

A. Yes, sir.

Q. He made quite a kick and a fight?

A. O, no. He did not understand what I wanted to do and grabbed hold of me.

Q. Did he make any effort to get your weapon or gun? You held your gun in one hand and held him with the other?

A. Yes, sir.

Q. What hand did you do the searching with?

A. With this hand. I turned his coat back.

Q. You turned him loose to do the searching?

A. It was unbuttoned and I pushed it back.

Q. Did you point the revolver at him?

A. No, sir.

Q. You did not hold it on him?

A. No, sir. I would not have had the revolver but—

Q. There was nobody in the office when you got the phone message but you and Sandor?

A. I do not remember seeing him in the office.

Q. Where did you find him?

A. I was driving up from the stable to the office and drove up in front of the office—

Q. Nobody there but you and Sandor?

A. No, sir; it was in the operator's room.

Q. In the telegraph operator's room—he had just received it?

A. He told me that when I came in the room. I do not know how long he had received it.

Q. Did you get in the buggy and drive up to the office?

A. Yes, sir.

883 Q. And got out and went in again?

A. No, sir; not in the commissary.

Q. Where is that from the office?

A. Right across the street.

Q. Was Satterwhite in there?

A. In the commissary?

Q. Yes. sir?

A. No, sir.

Q. Who was in the commissary?

A. I do not recollect. When I went in there there was quite a number in there.

Q. Was Mr. Harlan in there?

A. No, sir.

Re-Direct Examination.

Q. How did you have this pistol?

A. I had it in my hand. I also had a handkerchief in my hand.

Q. I mean when you took hold of Mihaley?

A. By my side. I never raised it higher than my hip at any time.

Thereupon the defendants to maintain the issues in their behalf called and had sworn the defendant OSCAR SANDOR, who testified as follows:

Direct Examination.

Q. What is your nationality?

A. Hungarian.

884 Q. You are employed by the Jackson Lumber Company?

A. Yes, sir.

Q. How long have you been so employed?

Q. Six months.

Q. When did you go there?

A. The twenty-first of May.

Q. Did you come down with some of the people?

A. Yes, sir; with Mr. Gallagher on the first transport.

Q. How many came down then?

A. I should think about thirty-five or forty—the biggest bunch.

Q. What were your duties with the Jackson Lumber Company?

A. I am clerk in the naval stores department.

Q. Were you used for anything else?

A. Yes, I was used as an interpreter ever since I got there when Mr. Harlan or Mr. Gallagher or Mr. Lamater or anybody had a man who wanted to speak who could not speak English.

Q. And whenever they wanted to speak to a foreigner who could not speak English they used you as an interpreter?

A. Yes, sir.

Q. You came down with the others as an ordinary laborer?

A. Yes, sir.

Q. What did you do when you first got there?

A. Mr. Gallagher found I was not physically able to do hard work and I worked in the kitchen for two days and then he was good enough to after what I had been doing before and I told him what my business was and he took me to Mr. Harlan and introduced me and I got the job I got now.

Q. Mr. Gallagher helped you to get a better job?

A. Yes, sir.

885 Q. Do you know what his attitude was towards the others?

A. As far as I could see he was very kind to all of us.

Q. Have you ever had an opportunity to observe his conduct towards the other men there, the foreigners?

A. I have on occasions when I was addressed as interpreter.

Q. What was his manner and attitude towards them?

A. They telephoned me to come out to the log camp whenever anybody—

Q. I will ask you now about interpreting—what was his attitude and manner towards the foreigners, Mr. Gallagher's?

A. If a foreigner went to him and asked him to do something for him and he was not satisfied with his work he would send for me and he would say Sandor ask this man what he wants and I would ask him. the man, and translate it, and whenever I have gone out to the log camp and there was any trouble between Mr. Gallagher and the foreigners he always fulfilled every wish that they requested of him.

Q. The turpentine camp was at one place and the log camp at another?

A. Yes, sir.

Q. You are the general interpreter, whenever anything occurred either at the log camp or the turpentine camp or at the mill?

A. Yes, sir.

Q. They sent you from time to time to these places?

A. Yes, sir.

Q. Where were you stationed when you were at your place of business?

A. Office of the naval stores department in the office.

Q. Where?

A. At Lockhart.

Q. Now, do you get communications to go without knowing or would they let you know what they wanted?

A. The communications came through Mr. Satterwhite.
Of course, I did not have any telephone. He would
886 come in and say you are instructed to go to the mill,
saw mill, log camp or turpentine camp or anywhere
they requested me to go.

Q. He attended to the telephone as well as to the telegraph office?

A. Yes, sir.

Q. He would simply come in there and tell you you were wanted at this place and that place and the other place and you went?

A. Yes, sir.

Q. You were employed and subject to orders?

A. Yes, sir.

Q. Now, on this day of the Mihaley transaction did you get any communications that day?

A. I did.

Q. From whom?

A. Mr. Harlan.

Q. What was that?

A. He came into my room—I was sitting there—he said a man had broken into a man's trunk and had run away and he wanted me to go with Dr. Grace to the log camp and try to locate him.

Q. Did you know that you were going anywhere except to the log camp when you left there?

A. No, sir.

Q. And you simply went to the log camp under instructions?

A. Yes, sir.

Q. Supposing you were required as you had been before as an interpreter?

A. Certainly.

Q. When you got to the log camp what was done?

A. I met Dr. Grace and we drove on together and met
Mr. Gallagher upon reaching the log camp and we
887 drove up to the turpentine commissary. I drove in
one buggy and Mr. Gallagher and Dr. Grace in the
second bugy and then we left Dr. Grace's buggy at the commissary and both got into one buggy and all three then drove along towards Laurel Hill and when a shower came up went into a farm house and after staying there for awhile we came out and went driving towards Laurel Hill. We arrived there and stopped at a place which I am certain was a blacksmith place and spoke to a lady and then passed along and was driv-

ing along five or ten minutes when we saw Mihaley coming along. Well, we did not see him sooner because of a turn in the road and he was ahead of the horse, so Dr. Grace jumped out of the bugy and Dr. Grace was cleaning his revolver—it was in the bottom of the buggy and it was raining and it was wet, so he got out with the revolver in his hand and approached Mihaley and got hold of him and he turned up his hand this way and looked to see whether there were any clothes on him. Dr. Grace was and then Mr. Gallagher was sitting in the buggy driving up there and hit him one lick. Then Dr. Grace and Mihaley they went along about fifty feet and we drove up and Mr. Gallagher got out of the buggy and licked him again twice and at that time the horse got afraid and backed with me—tried to run away. I was nervous of the horse and could not balance him and Mr. Gallagher came up and got hold of the horse and drove back again and then I believe Dr. Grace and Mihaley were walking along. I know after awhile they only walked two or three minutes when they put him in the back of the buggy and we was driving along—I had no idea of what kind of nationality he was so far and suddenly I heard him say in bad Hungarian that I want to go back to Lockhart. Then of course I knew he could speak English and Mr. Gallagher instructed me to ask him where those things are what he had stolen. I repeated the question two or three times and could not get any answer and we drove
888 along and met Dr. Craig and Mr. Reese and then went along again and before we got to Paxton Mr. Gallagher instructed me to put the following question to him: Would you prefer to be delivered up to the authorities at Paxton or do you want to come back? He said this. I want to go back to the saw mill in Hungarian to me. That is all he said. That is all that passed between us. Then we drove through Paxton to Florala and got to Florala and went in the bar and then I went and buy some collars. That is the reason I remember getting out together and then went back again and Mihaley was there and we went to Lockhart and then got out at the commissary. As soon as I got out of the office I went to the office and heard later that Dr. Grace and Benderstock had carried Mihaley back to the camp.

Q. Did you see any striking of Mihaley at the commissary?

A. I could not because I left them immediately.

Q. Now, this man Charley Haas do you know whether he was ever detained there at all or not?

A. Charley Haas—there was a custom in Lockhart when any of the men at the turpentine camp or anywhere—foreigners I am speaking about, being not satisfied with their work he could come to me and tell me he was not satisfied and it was my duty to see to go to the various superintendents and try to get a job for him. I remember very well that I got several jobs for him and after a week I saw him hanging around there and I asked him what he was doing there and he says he cannot get a job and so I went around and ascertained the reason of it and they all told me that he was no good at all and they had to discharge him but I positively remember the fact that I told him to get out of Lockhart because he was loafing around there.

Q. Some of these people were of the same nationality as you are?

689 A. A majority of them were Hungarians.

Q. You listened to their complaints and communicated them to the other men and tried to satisfy them?

A. Yes, sir.

Q. Did these other men endeavor to satisy them and give them employment here and there?

A. O, yes; people came in from the turpentine camp and asked me to do something for them and I would ask Mr. Harlan and he would tell me to go and see this man and that man and satisfy them and as far as the Hungarians are concerned I know everything.

Q. This class of Hungarians testifying here in behalf of the Government—Keller, Smith—

A. They are not Hungarians; I do not know what they are.

Q. You were not foremen of any men?

A. No, sir; clerk and interpreter, nothing else.

Q. You had no interest in bringing the men back?

A. Absolutely nothing.

Q. You had nothing to do with it?

A. No, sir.

Q. You were there as interpreter and had that duty to perform?

A. I was a piece of machinery. Was told to say so and so and repeat the answer and I could not exercise any right of my own.

Q. Did you take hold of him at any time?

A. No, sir. I did not touch him. I had nothing to do with it. No, sir.

Q. You remained in the buggy?

A. I remained in the buggy all the while.

Q. You heard Dunkey's testimony here, didn't you?

A. No, sir.

Q. He says that you gave them a pass to get out of there—you told them they would need that; what about
890 that?

A. This is the case. Dunkey, he is a sort of cripple and he is not a man that is able to do much work, so we had considerable trouble with Dunkey. He was discharged from one superintendent and through my efforts was put into another department and he fell and was injured and he came into my office and said that he has got no work and does not know what to do; so I went to Mr. Harlan and laid the matter before him and he says I want to speak to Dunkey. He spoke to Dunkey and then he came out and I says looks here—he came to my office and I says Donkey get out—go away. I remember perfectly well because the train leaves at five o'clock —I says the train is due at five o'clock, get out, Donkey, as soon as you can. There was absolutely no mention of pass whatever in our talk and there was no passes given by me.

Q. They never were required?

A. Absolutely nothing.

C. And none were given?

A. No, sir; not by me, never to my recollection.

Q. He says he left there with another man?

A. I do not know. I told Donkey to get out. I do not know with whom he left.

Q. Was there any other fact or thing that you desired to state in your behalf that you think of?

A. Not as far as I recall. Of course I can repeat that I was an interpreter and obeyed my duties to the company as interpreter—that is all.

Q. What time did they have their evening meal at the Lockhart Hotel?

A. Supper started at six o'clock and goes up to half past seven.

891 Q. Do you know what time you got back to Lockhart with Mihaley?

A. It must have been between half past seven and eight or a quarter past eight. because I remember I was very hungry at the time and I could not get anything to eat at the hotel, as I say the meal hours half past six, and I went to the commissary and bought some lobsters and crackers, and that is why I remember it.

Q. Was it or not a universal thing to have meals from six to half past seven?

A. That is the general rule there—kind of an adopted rule among the men.

Q. And you knew the supper hour was over when you got in there?

A. Yes, sir.

Q. You were about among these camps more or less as interpreter, were you not—frequently among all the men. Hungarians and others, and all?

A. Yes, sir.

Q. Was there any time so far as you could discover any of these men detained against their will?

A. No, sir; I do not know of any incident at all.

Q. Did they ever make any complaint to you to that effect?

A. No, sir; never.

Q. They did talk with you freely?

A. Yes, sir.

Q. They came and went as they pleased?

A. They did.

Q. Did you notice them coming and going from Florala and various places?

A. Yes, sir.

Q. Would they go in from there and return of their own volition?

A. Return or not return.

892 Q. They did both?

A. Yes, sir; some returned and some did not.

Q. You heard Dunkey testify here about some Germans that Mr. Lamater brought back?

A. Yes, sir.

Q. Were you out there about that time?

A. Yes, sir; on the day Mr. Lamata came into the office and asked me to go out with him to do some interpreting and we drove out to the turpentine camp and that was—Mr. Lamata had about thirty or forty men and a majority of them were foreigners, so when we arrived there they were waiting dinner time and Mr. Lamata told me to ask each man whether he was satisfied whether his work was heavy or not, or whether he wanted to go to some other department. I asked every man and eleven of them told me that their work was very heavy and they wanted to go somewhere else, so Mr. Lamata told me to tell them that same night, six o'clock, after supper, they would be taken to the mill and distributed around there.

Q. Those men that wanted to go—the men expressed a desire to go to the mill instead of working in the turpentine camp?

A. Yes, sir; I remember I told them distinctly any Germans and Hungarians.

Q. Those two men that Dunkey testified to, were they a part of those eleven?

A. Yes, sir; there are about eight or ten shanties there where they sleep and so on and two Germans got hold of a Greek that was standing out the kitchen door—I believe Dunkey was cook at the time—and they got hold of a Greek and went from shanty to the other shanty, so Mr. Lamata asked me to go over there and ask what are they doing. They told me they wanted to go to Lockhart, so he instructed me to tell them no necessity because they would go the same
893 night and they actually went the same night.

Q. So it would not be necessary to walk and they did go?

A. Yes, sir; they went the same night.

Q. And that is all there is to it?

A. Yes, sir; all I have seen of them.

Cross Examination.

Q. The first you knew you were going on that trip down to Laurel Hill—did Mr. Harlan come into the commissary?

A. No, sir; to my office in the rear of the building.

Q. What were you doing there at the time?

A. I was employed to do some correspondence. I am not certain what I was doing at that time.

Q. Your duties as clerk in the commissary department—

A. No, sir; my duties are to go to the turpentine still and grade the rosin and also employed in the office buying and selling of turpentine and rosin.

Q. Then you spent very little of your time in the office?

A. I spent Sundays. I went to the still in the morning and came back at eleven or twelve o'clock.

Q. When you got down there and ran into Mihaley you stayed in the buggy?

A. Yes, sir.

Q. How far were you from the house?

A. About fifty feet or so from Mrs. Paul's.

Q. On the left hand side of the road?

A. Yes, sir.

Q. What did the old lady say; what conversation did you get up?

894 A. I did not have any, but they spoke to Mr. Gallagher and asked him what the trouble was about, so he says, pointing at Mihaley, he had stolen something.

Q. You are certain of that?

A. Positive.

Q. You are absolutely certain that you did not say anything to the woman in the house?

A. Absolutely positive.

Q. You are as positive about that as you are about your testimony here generally about this incident?

A. Yes, sir.

A. Have you not been in the court room and heard the other witnesses testify.

A. Yes, sir.

Q. You have paid very close and attentive attention?

A. Yes, sir.

Q. You had this conversation with Mihaley on the way back and you asked him whether he wanted to go on or go to jail.

A. Before we got to Paxton.

Q. Did you speak in Hungarian?

A. Certainly, sir; a portion Hungarian.

Q. You are a native Hungarian?

A. Yes, sir.

Q. Are you a Jew?

A. No, sir; a Lutheran.

Q. Now when you got back you got out of the buggy, did you?

A. Yes, sir; at Lockhart.

Q. And you did not drive up in front of Mr. Harlan's house?

A. No, sir.

895 Q. Did you see Mr. Harlan any more that day when you got back?

A. I do not recollect.

Q. What were you doing over at the turpentine camps that day? Did you go over there especially to see about the Germans?

A. Yes, sir; Nr. Lamata came in and asked me to go out.

Q. You say that Mr. Lamata came to Lockhart for you?

A. He did, sir.

Q. Did they have a phone connection at the office?

A. Yes, sir; but Mr. Lamata had some other business to attend to and he very often came to the office.

Q. Then he carried you back with him?

A. Yes, sir; in the buggy; he very often done this.

Q. Did he say—did he say anything about the Germans wanting to get away from there—did he tell you anything about the German wanting to run away?

A. No, sir; he told me he wanted me out there to ask every man whether was satisfied or not.

Q. Did you have any conversation with Dunkey over there, that day?

A. Which day?

Q. The day you went to the Lockhart camp?

A. Yes, sir.

Q. Did you talk to Dunkey?

A. Certainly I did.

Q. What did you say to him?

A. I remember that I was very hungry and he made me a plain omelet and I spoke to him and asked him if he was satisfied and he told me that he got on very well. I remember the time.

Q. That subject was preying on your mind every time you went there. What did you speak to Dunkey about?

A. I told you the truth. At the time when this thing it so happened that Mr. Harlan had instructed me to look after the hotel and Dunkey told me he was a good cook—

896 Q. Then you was asking him what sort of a complaint he had to do. Now, you say you were constantly out there asking people if they had any complaint to make?

A. Whenever I was instructed to go out.

Q. Did you have any particular instructions about Dunkey?

A. No, sir; nothing at all.

Q. Now you say while you were there two Germans carried off their valise or trunks?

A. Valise I should call it.

Q. Had they carried them off before you got there?

A. I do not understand the question.

Q. Had they gone off with their baggage?

A. No, sir. They were standing there and going from shanty to shanty.

Q. You were there when they went away, were you?

A. They did not go away at all.

Q. Did I understand you to say you saw them bringing back something, these two Germans?

A. No, I did not say so. I said they went from shanty to shanty and from their actions attracted our attention and Mr. Lamata instructed me to see what they are about and they said they wanted to go to Lockhart and I told them to go on the wagon that very night.

Q. Didn't Mr. Lamata and the two cooks or one cook and a carpenter go after these men and bring them back with their baggage?

A. No, sir.

Q. Did you see Mr. Lamata with a gun?

A. Not that day. I know he had a gun—that is I see his gun, but I did not see that he used it in any way.

897 Q. Did the Germans go back with you that evening?

A. Not with me, but they went back with the wagon and I came in later with Mr. Lamata.

Q. I want to know this, Mr. Sandor, that when you were interpreting for this man Mihaley on the way back, do you state positively that he told you he would rather go to the camp than go to jail?

A. He said this, sir; I want to go back and go in the saw mill. That is what he told me positively.

Q. What did you tell him about working in the saw mill?

A. I did not tell him anything. I could not have told him. He only came the day previous and I written down his name and I had never seen him but once.

Q. Did you tell Mr. Gallagher that this man wanted to change his employment?

A. I told him, sir, I translated to Mr. Gallagher then all there was—that was my instructions. I put the question to him in English and I put it to him and I told him in English the equivalent to it.

Q. Did Mr. Gallagher tell you to tell him what he might do—would make any change at all?

A. No, sir.

Q. He did not answer that?

A. No, sir.

Q. Now, you say you saw Dunkey the day he left there?

A. Yes, sir; I am positive of that.

Q. What conversation took place between you and Dunkey about his coming to Pensacola?

A. Nothing so far as I can recollect.

Q. The day now that you told him to leave and the day that you did not get these passes from Mr. Harlan and gave to him, didn't he tell you that he was coming to Pensacola?

898 A. He told me that he was coming to Pensacola.

Q. Did you not advise him not to come to Pensacola, but to go to Montgomery or out that way?

A. No, sir; I have not. I am positive of that.

Q. Didn't you give him some reason why you did not want him to come to Pensacola?

A. No, sir.

Q. Did you give the other man any reason?

A. I do not know any man was with him. I did not see any man with him.

Q. Do you know that Mr. Gallagher, Dr. Grace and yourself was down here in August?

A. Yes, sir.

Q. Was it not at the time that you saw Dunkey and told him to leave there after the time you and Grace and Gallagher had been down there?

A. Was it the time?

Q. After you had been down here and went back?

A. I do not know. It might have been. I believe he left before I came to Pensacola, but I do know that I did not tell him where to go.

Q. You do not know when he left there?

A. No, sir.

Q. How many times did you go to Mr. Gallagher with complaints of the foreigners?

A. I remember one time I went to the log camp and some of my countrymen told me those Jews were beaten by an Italian and I went to Mr. Gallagher and told him that.

Q. And yet it was your business to hear complaint and report to the bosses what they wanted and what complaints they had to make?

899 A. No, sir; it was not. Those people when they had any complaints to make came and told me—now, these people came to me voluntarily and told me everything.

Q. I thought you said it was a part of your business as interpreter when the people made complaints and could not understand them to send for you?

A. Yes, sir; that is right.

Thereupon the defendant, JOHN LAMATA, was recalled and testified as follows:

Direct Examination.

Q. Do you know how long Dunkey was at the turpentine camp?

A. To the best of my recollection eleven and a half days. He was there, but I am not certain that he worked.

Q. I want to ask you another question—whether or not these men would leave from time to time and return voluntarily and applv for work?

A. Yes, sir; I had several to leave. Had some to leave two and three in a bunch and come back and go to work again and have also had men possibly forced by circumstances, compelled to come back at the time of the storm. They could not get to Pensacola. They started to walk and came back and applied for work. But outside of that we had several who came back voluntarily without any persuasion, force or any outside influence to cause them to come back.

Q. I want to ask you another question. These men, did they know anything, did it take any experience or skill in cutting boxes?

900 A. We were not cutting boxes at the time, but all turpentine work requires a certain amount of training. A man cannot go in the woods and work without knowing something about it, and not only know, but it requires practice. A green man will waste more gum than he will get in the barrel and when we got the men I knew we would have to have men—experienced turpentine men in training them to do the work, and for that reason I had men to go with them to show both dipping and chipping, and show them about the timber, and when you have been over a piece of timber and come back again to show them how to tell that. Frequently we would have to have Sandor to tell them what we wanted them to learn. He could explain to the men what we could not explain to them and show them how to do their work and tell them what to do and how to do it.

Q. What do you mean by explaining—

A. There are several things a man can pick out, the little disadvantages—if you do not want him to do a certain thing a certain way in the first explanation of it to him it is better to start him right, for without the instruction he might pick up a lot of little disadvantages by not knowing how to do the work.

Cross-Examination.

Q. There was a bunch of men that came back by force of circumstances. Do you remember the time of their return?

A. I cannot give the exact date, but it was Tuesday after the storm they came from Pensacola.

Q. That was in September sometime?

A. No, they came back in October. I think they left the
day after the storm. I think it rained until Friday and Fri-
day morning they left and started for Pensacola,
901 thirteen of them. There was eleven of them that
came back the following Tuesday night just before
supper time, and came to me, and one of the Hungarians who could speak a little English, and asked me to give them work and I told them I did not care to work them any more, that I had made other arrangements and had gotten other men. They begged pretty hard and I told them to get supper and told the cook to fix supper for them, and I would let them know after supper whether they would work or not.

Q. Do you know whether the company was indebted to any of these men at the time.

A. The company was in debt to very nearly all of them, but Friday when they went away they asked me to pay off. The following next day week was our regular pay day and I told them if they would work until next Saturday week, just one week and one day, I would pay them off at regular pay day when I paid the rest of the men off, and I do not know what caused them to leave or anything of the kind, except that they got on their heads and pulled out.

Re-Direct Examination.

Q. Were there any there that wanted to go that was not allowed to go?

A. None at all.

Q. Indebted or not indebted?

A. There were several in that bunch that were indebted to us, but I do not know how many, but nearly all we owed.

902 The defendants then and there introduced in evidence and read to the jury section fifty-five-ten of the Criminal Code of Alabama, as follows:

5510: Immigrant Leaving Service Without Payment of Advances:

Any immgrant who abandons or leaves the service of an employer without repaying all passage money and all other advances must on conviction be fined in a sum not more than double the amount of wages for the unexpired term of service, and imprisoned not longer than three months or sentenced to hard labor for the county for not more than three months, at the discretion of the jury.

The defendants then and there put into the possession of Government's counsel the contracts heretofore referred to in the evidence of W. S. Harlan.

Thereupon the defendants to maintain the issues in their behalf called DR. CRAIG, who testified as follows:

Q. You remember the Mihaley case, Doctor, about which you testified the other day?

A. Yes, sir.

Q. Will you state whether or not prior to that time you saw any foreigners passing through Laurel Hill?

A. I saw one bunch going through.

Q. About how many?

A. I suppose nearly a dozen. They stayed there one day all day long.

903 Q. About how long before the Mihaley case did you see them?

A. It was sometime in the month before that; I do not remember whether it was one, two or three weeks.

Q. Did you see any others?

A. I met about six one morning out towards the ferry going towards Falco, about five miles out from Laurel Hill.

Q. South?

A. Rather northwesterly.

Q. Towards Crestview?

A. No, sir; going towards Falco. They looked like these fellows. They passed along the road with a bundle and I drove right through the road.

A. All of them appeared to be foreigners?

A. Yes, sir.

Q. Do you remember where you met Mihaley first that day?

A. Yes, sir; just beyond Mr. Paul's.

Q. What was the condition of the road?

A. It is on top of a hill. The road was a little washed there. It was on top of a sand hill.

Q. Was there any water in the road?

A. It does not stand long. It rains and runs off very quickly. I do not remember the condition—whether there was any water there or not, but I do not recall any water being there.

Q. You say it was on top of a sand hill?

A. Yes, sir.

Q. Ordinary sand hill?

A. Yes, sir.

Q. You did not notice any water in the road, but you say his manner in turning out of the road attracted your attention?

A. We thought that he was looking for a land line; that was what Mr. Reese and I were looking for, and he
904 went up to a tree and Mr. Reese says to me there is a fellow looking for a land line, and then I saw that he was not one of the natives of our country.

Q. You saw no water in the road that would explain about his turning out?

A. No, I did not notice any.

Q. Now, these men at Laurel Hill, these foreigners. Did you see anybody attempting to return them?

A. No, the people there were trying to get them on their way—they had an idea they would try to rob them. They did not do anything, but you know how a little village would be about foreigners—they had no money and were trying to get down towards Crestview. One fellow tried to smuggle them into a box car and give them a free ride to Crestview, but the conductor caught on.

Q. You mean one of the foreigners?

A. No, one of the boys at Laurel Hill—one of the railroad boys—he wanted to get them away from there.

Cross-Examination.

Q. Was that a sandy road?

A. Yes, sir; it is a gravel sand.

Q. Pretty heavy road?

A. No, not very heavy.

Q. Do you know whether there was other little outside roads—little parallel roads?

A. Yes, sir.

Q. There were such roads along there?

A. Yes, sir; Mr. Reese and I drove out on one or two through the woods looking at the timber.

905 Q. What time was it—what month was it that these foreigners were passing through there?

A. It was just before these reports came out.

Q. You stated as one of the reasons the people were trying to get them away from there they did not know but what they might be a dangerous element?

A. Some talked that way.

Q. Was there not another reason?

A. Not that I know of.

Q. Was it generally known around there that they were picking them up and carrying them back?

A. Not that early; that was later.

Q. That was learned afterwards?

A. Yes, sir.

Q. Was not the people of Laurel Hill in sympathy with them and trying to get them away?

A. I do not know, with that bunch. They were later.

Q. Subsequent to that time they were?

A. Yes, sir; they took up a subscription.

Re-Direct Examination.

Q. Had this man turned out on one of those parallel roads?

A. No; he stepped out in the woods a short distance.

Defendants rest.

906 Thereupon the Government, having reserved the right to cross-examine as a witness R. H. TRAMMEL, he was recalled for further examination and testified as follows:

Direct Examination.

Q. I believe you said you remembered a man by the name of Sheehan, who came there to Lockhart early in August or the last of July?

A. Yes, sir.

Q. Did you take a ride with him?

A. Yes, sir.

Q. Where did you go?

A. From Lockhart to the log camps.

Q. Did you discuss on the way anything in relation to the camps?

A. We talked about it in a way, what he came there for; he did most of the talking.

Q. You did not do much of the talking?

A. I talked, too.

Q. Did you know at the time what his business was?

A. Yes, sir.

Q. Did you understand from him at the time that he was a representative of the Montgomery Advertiser?

A. Yes, sir.

Q. And did he state or did you know at the time that he had come there to present through the public press the Jackson Lumber Company's side of the case?

A. I do not know that it was to present their side; he came down to see the condition of things; he said he came down to represent the Montgomery Advertiser, and to see how things were, that is about what he stated to me.

Q. Now, I want to read you a paragraph in the paper here, and ask you whether or not you stated such things to this newspaper man:— 907

"In discussing the affair which brought so much publicity, Dr. Trammel said:

"To my mind the origin of the trouble is the cupidity of the New York labor agents. Some of the men they sent us were the scum of humanity. The agents would simply go down on the Bowery and pick who would say that he wanted work. Of course we got some bums and hoodlums in our crowd as well as some good men. These labor agents were paid $2.00 for every man they secured for us, and I believe, like other employes of the company, that some of the men hired were in partnership with the agents, that is, as soon as the money was paid over for them, they tried to escape from the Lockhart crowd so that the labor agents could hire them over to somebody else. In this way a half dozen men could be hired to two or three corporations every week. Long before they left New York, several of these men were trying to get away. They had not gotten in camp good before they began running away and making their way back to New York.

"Now, the company had paid $2 to the labor agents for each of these men and $18 passage for each man from New York, Gallagher was out here in the woods with these men and naturally didn't want to see the company flim-flammed in any such way. But I don't believe that he went to any such extremes as some of these Bowery toughs testified to in Pensacola. Moreover, some of the men that remained at the logging camp for as long as two weeks did practically no work. They were willing to eat and sleep, but they were not willing to do any work to pay for it after all that money had been spent on them. Gallagher, as woods foreman, issued certain supplies which are charged up against him. He is expected by the company to send in the mills enough logs to offset these supplies. Now, it is very probable that the men who were able to work, and who wouldn't work, heard from Gallagher.

908 "Gallagher is the best woods foreman in the business. He has been at the business all his life, and he knows how to manage men. I suppose he is one of the best paid lumbermen in the South. He is not the dangerous desparado that he has been represented. He is a man who does not fall back on a stick or pistol. Managing a couple of hundred men out in the woods away from every sort of influence is no little job, and it takes a man of force and strength to do it. Now, no set of men can be taken out of the world and set down to themselves without fighting and this crowd out here is no exception. And there isn't a man in the crowd, it makes no difference what sort of a reputation the fellow may have on the East Side in New York, that Gallagher is not willing to lay aside his coat and fight it out with as man to man. I simply don't believe what these bums and hoodlums have been swearing down in Pensacola."

A, I said some of that, but the most of it I did not say.

Q. Can you designate what part you did not say?

A. I told him that Mr. Gallagher was the best woodsman

I ever saw. He was a good man among his men; liked by his men, looked upon among his men as more of a member than a boss; I told him Mr. Gallagher was in authority when it came to work, but when it came to holidays and off hours that any man in his camp was free to talk to him and be with him.

Q. Did you tell him all about what the company was out?

A. No, sir; ever bit of it is a lie.

Q. Did you tell him, Mr. Gallagher, that the company had to look to him for logs?

A. No, sir; I did not know anything about those contracts at all—I did not know they were in existence.

Cross-Examination.

Q. You have asked about the conversation, now relate all you did say.

909 A. Well, I do not know that I can relate the entire conversation. He came to Lockhart, and I asked him out to the camp, and in going along he talked about the men and talked about the condition of the country generally; he said his paper had printed a report that the Pensacola Journal had given this matter, and wanted to see if they had done the company an injustice, and prompted by that desire, he came there to see, and we talked in a general way about the labor and other things. I do not remember all that was said.

Q. What did you tell him about the men and Mr. Gallagher?

A. I told him that Mr. Gallagher was a good woods foreman, the best I ever saw, treated his men good.

Q. Did you tell him what class of men you had there?

A. No; because they had just come there, they had not been there long enough for me to know; I told him there was a good deal of sickness among the new men undergoing the process of acclimation, and that there was a good many sick on that account.

910

The documents put into the possession of the Government's counsel, being the contracts heretofore referred to in the evidence of W. S. Harlan, and handed to counsel for the Government by the deefndants, were thereupon offered by the Government's counsel as evidence in this cause, and were as follows, to-wit:

Statement Account of
Joseph Barsodi,
Jackson Lumber Company.

1906.

Total Time Worked—

July, 1906, 5 days at $1.35 per day	$ 6.75
August, 1906, 10 days at $1.35 per day	13.60
	$20.35

Debits.

July transporation for self and wife at $18.00	$36.00
August 20 Court cost advanced	15.32
August 31 mdse. from store	10.63
	$61.95

Credits.

Sept. 28, coupon collected for board	$ 3.50
To balance due Jackson Lumber Company	$58.45

The State of Alabama,
Covington County.

Know all men by these presents, that we, Joseph Borsodi and wife, Theresa Borsodi hereby enter into this contract to work for W. S. Harlan:

I, the said Joseph Borsodi, to tend the garden and to keep the yard in good shape; am to devote one day in the week for this work, or more, if necessary, and then while not engaged in this said work, I am to work on the mill yard, and am to get $1.35 per day for every day that I work at mill. I, the said Theresa Borsodi, hereby agrees to to do the cooking for W. S. Harlan's family and to do the general housework, the milking and washing for the family, and to receive the sum of $12.00 per month for same. The said W. S. Harlan agrees to furnish a house for the above named parties to live in and to

give them their board while in his employ, the said
911 Joseph and Theresa Borsodi agrees for their said wages to go on the payment of the following items paid by W. S. Harlan; Transportation from New York, $36.00; store account, $10.63; cost of Court, $10.32. Attorneys fee, $5.00, and after the payment of these several amounts the said W. S. Harlan agrees to pay them the money for their work. We have each procured the said W. S. Harlan to pay this money for us, and it is paid at our instance and at our request. Said Joseph and Theresa Borsado are to work with with said Harlan as long as satisfactory to him.

JOS. BORSODI,
THERESA BORSODI.

Witness,
H. S. WHITE.

The State of Alabama,
Covington County.

Know all men by these presents, That it is hereby agreed by and between the Jackson Lumber Company, a corporation, and C. Krum, a private individual, and both of said State and county; that the said C. Krum agrees to hire himself as a laborer to the said Jackson Lumber Company, from the 13th day of August, 1906, to the 1st day of January, 1907, for the sum of one & 35/100 dollars per day, to be paid monthly. That said C. Krum agrees that the said Jackson Lumber Company may retain enough of his said wages each month to repay them for money advanced to him for passage money from the State of New York to Lockhart, Alabama, and other money which the said Jackson Lumber Company has advanced to pay board and other necessary egpenditures, amounting in all to the sum of thirty-eight & 70/100 dollars; that said C. Krum agrees to render respectful and obedient service to said Jackson Lumber Company, to perform diligently and actively all work pertaining to such employment, in accordance with the instructions of the said Jackson Lumber Company, or its lawfully authorized agent, and to attentively guard and preserve all property and interest committed to his charge, and in case of injury or loss of property through his negligence, the said C. Krum agrees that a reasonable amount in payment therefor be deducted from his said wages after having paid in full for all passage money advanced to him by said
912 Jackson Lumber Company, board and all other advances which have been made to him by said Jackson Lumber Company.

And the said Jackson Lumber Company, in consideration of the agreement above mentioned C. Krum, hereby employs the said C. Krum as a common laborer, and agrees to pay the said C. Krum the sum of one & 35/100 dollars per day, payable monthly, after deducting from the wages of the said C. Krum such sum or sums of money as in the wisdom of said Jackson Lumber Company may see proper, allowing him, the said C. Krum, enough every month to pay all necessary expenses; to be applied by said Jackson Lumber Company to the payment of passage money advanced to said C. Krum to pay his expenses from the State of New York and city thereof to Lockhart, Alabama, also the amount advanced to pay board and other necessary expenses which the said Jackson Lumber Company has been put to, amounting in all to the sum of thirty-eight & 70/100 dollars.

Provided, however, that the wages of the said C. Krum shall cease during the absence of said C. Krum, without leave, or sick and disable to work, that the said Jackson Lumber Company or its lawful authorized agent may discharge the said C. Krum for absence without leave, neglect of duty or disrespectful behavior.

Given under our hands and seals this, the 13th day of August, 1906.

C. KRUM, (L. S.)
JACKSON LBR. CO., (L. S.)
By W. S. HARLAN,
General Manager.

Signed, sealed and delivered in the presence of
L. H. BRASSELL,
C. H. MEINNIKE.

State Account of
Conrad Krum.

Number of days worked from time of arrival, June, 22, 1906:

June, 1906, 5 days less board at 50c per day	500
July, 1906, 12 days, 1 hour	1635
August, 1906, 15 days, 3 hours	2005

Charges.

Hotel bill as turned in for July and August	3505
Transportation from New York to Atlanta	1800
Court fees Florala, Fla., paid ck. No. 2831	1430
Total	6735

913

Credits.

Collected on board account for July and August	3235
Collected on transportation July and August	570
Collected on doctor and insurance account	100
Total	3905

To balance due Jackson Lumber Co. $39.05

Thereupon the Government called as a witness one WILL SHEEHAN, who, having been duly sworn, testified as follows.

Q. What is your occupation of business?
A. Special writer on the Montgomery Advertiser.
Q. How long have you been such?
914 A. I have been in the newspaper business about eight years; I have been with the Advertiser about four years.
Q. Were you with the Advertiser last August or July?
A. Yes, sir.
Q. Did you have occasion to go to Lockhart?
A. Yes, sir.
Q. In the month of August or July?
A. The last day of August.
Q. State how you came to go there?
A. I was in North Alabama, and received a telegram

from the managing editor of the Advertiser asking me to come to Montgomery at once.

Q. Were you sent specially by the Advertiser?

A. Yes, sir.

Q. Detailed for that special purpose?

A. Yes, sir.

Q. Then you went under the direction of the management of the Advertiser?

A. Yes, sir.

Q. Now, who did you first meet when you got to Lockhart?

A. Dr. Trammell.

Q. Did you know him before that time?

A. No, sir; not personally.

Q. You have not that letter that you say you received from the Montgomery Advertiser?

A. No, sir.

Q. Then you met Dr. Trammell—what time did you reach there?

A. I went to Florala about ten or eleven o'clock, I think the train gets there. I phoned over to the Jackson Lumber Company, and told them that I was at the hotel, and the gentleman who talked to me went off and came back 915 in five or ten minutes, and told me that Dr. Trammell would carry me down to the log camp, and would send a buggy over to the hotel, and in an hour or a hour and a half, a negro drove the buggy over, and about two o'clock in the afternoon we drove over to Lockhart, where Dr. Trammell met us, and he took the negro's place in the buggy, and drove from Lockhart to the logging camp in the woods.

Q. You informed Dr. Trammell what your business was?

A. I told the man over the phone, and told Dr. Trammell that.

Q. What your mission was?

A. Yes, sir.

Q. You interviewed Dr. Trammell over there?

A. We discussed the situation. I do not know whether he called it an interview or not; we discussed a matter that had been attracting attention.

Q. Did you get information from him about the way these men came there, these foreigners, they were having trouble with?

A. Yes, sir.

Q. About their contracts in New York and the advances by the company?

A. Yes, sir.

Q. You have got that from Dr. Trammell?

A. Yes, sir.

Q. Did you publish a report of your investigation?

A. Yes, sir.

Q. In the Advertiser of two days later? Examine this issue, and say if that is the issue of the Advertiser in which your report came out?

Q. Do you know whether there were any copies of the paper furnished the Jackson Lumber Company upon
916 its request?

A. I think so, I did not see the letter from them in reference to the paper; I think they got a few, say three or four.

Q. Copies of this paper?

A. Yes, sir; letters come from McClure's Magazine asking for the papers, and saying they had been referred by the Jackson Lumber Company.

Q. You did not have any further communication with Dr. Trammell?

A. No, sir; he brought me back to the hotel that night?

Defendants' counsel did then and there move to strike out the witness's testimony referring to the communication between the Advertiser and McClure's Magazine; which motion was then and there granted.

Q. After the report of your investigation was published, did you ever get any communication from Dr. Trammell in reference to what purported to come from him?

A. No, sir.

Q. Now, I am going to read to you what purports to be a statement of Dr. Trammell:

"In discussing the affair which brought so much publicity, Dr. Trammell said:

"To my mind the origin of the trouble is the cupidity of the New York labor agents. Some of the men they sent us were the scum of humanity. The agents would simply go down on the Bowery and pick up a man who would say that he wanted work. Of course we got some bums and hoodlums in our crowd as well as some good men. These labor agents were paid $2.00 for every man they secured for us, and I believe, like other employees of the company, that some of the men hired were in partnership with the agents, that is, as soon

as the money was paid over for them, they tried to escape from
the Lockhart crowd, so that the labor agents could
917 hire them over to somebody else. In this was a half
dozen men could be hired to two or three corporations every week. Long before they left New York, several of these men were trying to get away. They had not gotten in camp good before they began running away and making their way back to New York.

"Now, the company had paid $2 to the labor agents for each of these men and $18 passage for each man from New York, Gallagher was out here in the woods with these men and naturally didn't want to see the company flim-flammed in any such way. But I don't believe that he went to any such extremes as some of these Bowery toughs testified to in Pensacola. Moreover, some of the men that remained at the logging camp for as long as two weeks did practically no work. They were willing to eat and sleep, but they were not willing to do any work to pay for it after all that money had been spent on them. Gallagher, as woods foreman, issued certain supplies which are charged up against him. He is expected by the company to send in the mills enough logs to offset these supplies. Now, it is very probable that the men who were able to work and who wouldn't work heard from Gallagher.

"Gallagher is the best woods foreman in the business? He has been at the business all his life, and he knows how to manage men. I suppose he is one of the best paid lumbermen in the South. He is not the dangerous desperado that he has been represented. He is a man who does not fall back on a stick or a pistol. Managing a couple of hundred men out in the woods away from every sort of influence is no little job, and it takes a man of force and strength to do it. Now, no set of men can be taken out of the world and set down to themselves without fighting, and this crowd out here is no exception. And there isn't a man in the crowd, it makes no difference what sort of a reputation the fellow may
918 have on the East Side in New York, that Gallagher
is not willing to lay aside his coat and fight it out with as man to man. I simply don't believe what these bums and hoodlums have been swearing down in Pensacola."

Q. Was that the report of what he said, the substance of it?

A. Yes, sir.

Q. Did you get from any other source anything in relation to this agency, and the contracts that these agencies made, and the amount of the passage money, or did you get it from Dr. Trammell?

A. I got it from Dr. Trammell. The first representation of the company's side that I received in any way was in my conversation with Dr. Trammel right from Florala to the logging camp.

Q. You had no prejudice at the time?

A. No, sir.

Q. No bias?

A. No, sir.

Q. Now, L will read to you what purports—did you have a onversation with Mr. Gallagher on the same trip?

A. Yes, sir.

Q. On the same day?

A. Yes, sir.

Q. Where did you find Mr. Gallagher?

A. At the lumber camp, at the logging camp.

Q. Now, I will read to you what purports to be an interview with Mr. Gallagher as follows:

"Now, this disposes of Lambert's collection of lies," said Foreman Gallagher. "The other charge is that I beat up the Hungarian Mihaly. One of the Hungarians came to me and told me that Mihaly, or whatever his name is, had stolen some of his clothes and some little things that he had in his grips. Since this gang had gotten into camp there had been a lot of stealing, but to give the devil his dues, that Bowery
919 crowd, I believe, did more of the stealing than any
of the Hungarians. At any rate I set out with one of the men to tell Deputy Sheriff Axtwell at Laurel Hill to keep a lookout for the Hungarian, and to arrest him as he passed through Laurel Hill. As luck would have it, we ran on the Hungarian as we got into Laurel Hill. He tried to run away, and we had to draw the buggy whip on him to stop him. While my man was searching him to see if he was armed, the Hungarian started to fight. As I sat in the buggy I reached over and struck him twice with the whip while he was fighting.

"We brought him back to Paxton, where we were going to turn him over to a justice of the peace, but he begged so hard, to be carried back to camp, and he promised to settle with the other Hungarian. Shortly after we got back to camp he ran away again and got to Pensacola.

"This talk about my beating up men in camp is all talk and peppy-cock. I haven't done any such thing. Another one of those Hungarians is saying that I beat him when he knows he is lying. This jigger lay around camp for six days and by dodging did not do a lick of work. Three other Hungarians were bunking in one of those turpentine shacks out there, and while they were at work they complained that this jigger had been stealing their clothes and trinkets. One night I told Harry to slip over there and catch this thief of the Hungarian, as we saw him sneaking around the shack. When we caught him and searched him we found the other Hungarian's things on him. Well, we tied him up and were going to take him over to Florida, but the jigger got down on his knees and pawed my arm with his hand, begging to be let loose.

"After awhile I let him go and what does the scoundrel do but pretend to commit suicide. A negro comes by in half an hour and tells me there is a man lying in the pool 920 trying to commit suicide. Well, he had jumped in and put everything under but his head, and there he lay with his head on the bank and his body in two or three feet of water. We got him out of there and made him leave camp. Now, he says we beat him up. That's a fine lie.

"McGinnis got up there and swore I knocked him down and put a pistol in his face. I knocked him down all right, but I didn't make any gun play with him. McGinnis was some sort of a scrapper on the East Side in New York. When I met the gang in New Savannah, McGinnis was bragging about whipping a man on board the vessel coming down. On the way over he did up one of the men in the car.

"The night the crowd got in camp I was about to get in my buggy. I heard a fuss down by the men's sleeping quarters. I found that McGinnis was cussing out the whole shooting match. I says: 'What's the matter with you?'

"He says, 'I'm a white man and I'm not going to sleep in there with that d——d bunch of Polacks.'

"By that time there was five or six of that Bowery crowd standing around and I knew I couldn't do anything with the gang unless I whipped this man that was looking for trouble.

"So I says to him: 'You are going to sleep right in there. You are not here to run the camp.'

"He pulls his little old dinky derby down over his eyes and says:

"Why you————.

"Well, I didn't let him get any further. The jigger was a bigger man than I am, but I loosed a half arm jolt and caught him in the jaw. He fell back into his gang, but came up again. This time I uppercut him under the heart, and before he could get set on his pins, I pushed a couple of swings in his neck.

"Mr. McGinnis of the Bowery, New York, slept that night where I wanted him to sleep. And from then until 921 the time he ran away, Mr. Gallagher, of Lockhart, Ala., never had any trouble with Mr. McGinnis of New York City."

Q. Did you interview Mr. Gallagher? From whom did you get all this information about the McGinnis fight?

A. From Mr. Gallagher.

Q. And the Mihaly incident?

A. Mr. Gallagher; I heard of the Mihaly incident at Pensacola and at Laurel Hill.

Q. Was that his version of it to you?

A. That was practically his version.

Q. Was the word "jigger" his?

A. Yes, sir.

Q. Was the word "uppercut" and "undercut?"

A. I don't know about that.

Q. "Jiggers" is not so original down here, and the word struck me—you are certain, however, that "jiggers" is his?

A. Yes, sir.

Q. That is substantially true, all that he told you?

A. Yes, sir.

Cross-Examination.

Q. Mr. Sheehan, when did you visit the camps of the Jackson Lumber Company

A. That article was published on the third; on the first day of August I visited the camps.

Q. Just what was your full object in going there?

A. To investigate the allegations made that peonage existed.

Q. Did you make an investigation?

922 A. I did.

Q. To what extent did your investigation go?

A. It went to the extent of my coming to Pensacola and looking up the witnesses here and finding out what the witnesses in the case had testified to before the United States Commissioner on the preliminary hearing, then a trip to Laurel Hill, Florida, where I saw six or eight different persons there in regard to it, and then to Lockhart, and over to the logging camp, where I talked to a number of people, in Florala, and to Dr. Trammell, and to several others—two or three bosses, and to some of the men.

Q. You went to a number of the men, did you? You did not go there for the purpose of taking the Jackson Lumber Company's side of the question?

A. No, sir.

Q. You went there to report the truth as you found it?

A. Yes, sir.

Q. Were you present at the time during the examination of any of the witnesses in Pensacola?

A. No, sir.

Q. Did you talk to any of the witnesses in Pensacola?

A. No, sir.

Q. Did you talk to any of the men at Lockhart and the logging camps?

A. Yes, sir.

Q. You went about among—

A. I had one or two questions I asked every one?

Q. What were they?

A. I particularly asked them this—if they were permitted to go to Florala whenever they got ready.

Q. What did they say?

A. All answered they were.

923 Q. You took them indiscriminately?

A. Yes, sir.

Q. You were sent there to make a thorough investigation?

A. Yes, sir; I wanted to find out that—I wanted an answer to that question more than any other.

Q. Did you ask that of how many?

A. Probably half a dozen.

Q. Where?

A. Most of the men were out in the woods—most of the Hungarians, and I did not think it worth while to make the trip; there were a number in the logging camp, and I thought if I got that statement from them, it would be sufficient, and I asked them that particular question.

Q. Where were they?

A. There were two in the hospital, two or three in the camp, not working, and two or three working around the kitchen.

Q. Now, this conversation you had with the doctor was in the buggy?

A. Yes, sir.

Q. Driving out there?

A. Yes, sir, and driving back.

Q. When did you write up the report, Mr. Sheehan?

A. I wrote it up the following day?

Q. Where?

A. Montgomery.

Q. You wrote it up in Montgomery? Did you make notes of the conversation as you went along?

A. Yes, sir; I made a few notes.

Q. In long hand?

A. Yes, sir.

Q. To what extent?

924 A. Very brief, I should say.

Q. Just simply headings?

A. Yes, sir.

Q. You did not charge your mind with the identical words used—I suppose you were clothing them in your own language, were you not?

A. Well, to some extent, yes sir; and then, to another extent, I tried to get as many that would identify the words of Dr. Trammell, some original expressions, for instance, like the word "jiggers" in Mr. Gallagher's statement.

Q. Just now and then an original word, instructive as being characteristic of the man.

A. I tried to make it characteristic of him.

Q. Just some language that the party had used that would be characteristic of the party talking?

A. Yes, sir.

Q. Now, then, the rest of it was merely the thought and the impression made upon your mind from what was said, is that right?

A. Yes, sir; my memory of the conversation with these notes.

Q. You did not undertake to use the exact language of course outside of the very few characteristic words?

A. All the words used were not all the exact words of Dr. Trammell nor were all the words he used left out.

Q. Now, this dialect, this prize fighting occurrence, whose language was that?

A. Well, now, part was Mr. Gallagher's and part was my own; he described in a few words a fight he had, and that paragraph, part of it, was his words and part mine, the thought in all was his.

Q. Is it not a part of your duty to tell the truth, and at the same time make it attractive?

A. Yes, sir.

925 Q. The substance of it was his the language, a good deal of it, your own?

A. Part of it, but in the main, Mr. Gallagher's statement follows his original words. I charged myself about that because he was an essential feature in this thing, and besides that he appeared to me to be a rather picturesque character, and I charged myself with following him very closely in my conversation.

Q. Did you take any conversation down in shorthand?

A. No, sir.

Q. Now, where did you have the conversation with Mr. Gallagher?

A. He and I walked about the camp; he and I went down to the hospital.

Q. Where did you first see him?

A. In front of the men's sleeping quarters at the logging camp.

Q. Did you tell him what you came for?

A. Yes, sir.

Q. Did he take you among the men?

A. Yes, sir.

Q. And gave you free access to them?

A. Yes, sir.

Q. Now, I suppose the entire report was written up at the same time?

A. Yes, sir.

Q. Both the Gallapher and Trammell?

A. Yes, sir.

Q. So that you have just explained your entire report of what Mr. Gallapher said to you? Did Mr. Sheppard give the entire report of what Mr. Gallagher said?

A. No, sir.

Q. Did he give the entire report of what Dr. Trammell said to you just now?

926 A. I hardly think not.

Q. Then the balance of that report is as true as that part he read to you, is it not?

A. Yes, sir; I think it a very accurate report all the way through.

Q. You found the conditions then had been very much falsified, did you not?

A. The original statement made about them? Yes, sir.

Q. Then you found from your own personal investigation made that a great deal of what had been said was false?

A. Yes, sir; a great deal of the original statements had been false.

Re-Direct Examination.

Q. Did you examine any testimony on that trip?
A. Yes, sir.
Q. Any evidence?
A. Yes, sir; I examined the full testimony.
Q. In this Court here?
A. Yes, sir.
Q. The examination that took place here?
A. I had access to a copy of the testimony brought out.
Q. Now, did your investigation correspond with the testimony; the testimony true generally?
A. Yes, sir; very near in accord with the testimony.
Q. That you had read?
A. Yes, sir.
Q. That you found the facts not to sustain the published reports of the newspapers?
A. That is what I referred to; that is what I was sent down to investigate.
927 Q. The newspaper report?
A. Yes, sir; taking the statements these men had made.
Q. How about the condition of peonage?
A. That was also included; it was charged in the papers, for instance that these men had been promised three and four dollars per day, that they were half fed, not cared for; that was all in the newspaper report together with the peonage charge.

Thereupon the defendants' counsel moved the Court to strike the statement of the witness that he examined the testimony of the witnesses here at the preliminary hearing, and that he found those statements to be true, it being merely an opinion of the witness, which motion was then and there granted.

Re-Cross Examination.

Q. Where is it you say you learned of the contract of these men?
A. You mean where I first got a denial of the published statement about the contract?
Q. I understood you to say on yesterday that the first you knew just what the contracts were was from Dr. Trammell?
A. No, that was a mistaken impression. The first I knew

of the cause of getting the men to Florida was from Dr. Trammell.

Q. Did you go to Florala and Lockhart before you came to the commissioner's court?

A. No, sir.

Q. You had been over the testimony of the commissioner's court before you went there?

A. Yes, sir.

Q. And you went there to make—either to verify or disprove one of the other of those statements?

928 A. Yes, sir.

Q. Now, in that testimony were not those contracts, some of them—

A. Yes, sir; my recollection of the statement made in the testimony was that some of the men stated that they had been promised two and a half and three dollars per day.

Q. You know the contents of their contracts?

A. No, I said that was stated in the testimony; I go to Laurel Hill, and Mr. Von Axelson told me that this was not true; they had signed contracts, and the men had not been promised so much.

Q. Were there not some of the original contracts in evidence there for your inspection?

A. I think there was, I think I saw those contracts.

Q. Then you know the contracts, did not you, before you went to see Dr. Trammell?

A. Yes, sir; I knew the contracts.

Q. I want to know whether you found it out here?

A. The only time that made an impression on me—I never considered it important much until I had a talk at Laurel Hill with Mr. Von Axelson, and one or two others.

Q. Didn't you consider the contract itself of any importtance? Of more importance that what the people of Laurel Hill told you? Did not you regard the contract itself of the most importance?

A. That particular feature of the case had not been made an issue until I made it an issue?

Q. When did you decide to make it an issue?

A. In talking with the people at Laurel Hill.

Q. You knew their claim down here, did you not?

A. Yes, sir.

Q. You knew at that time that the original contract was in the possession of the commissioner, and that you could inspect it and did inspect it.

929 A. Yes, sir.

Q. How many columns of your paper did that report that you made consume?

A. I should say it was between five and a half and six columns.

Q. I will point it out to you here—from there down to there.

A. Yes, sir.

Q. I understood you to say on yesterday that you found that the report in the newspaper was untrue, did you make a report like this from that investigation?

But counsel for the Government did then and there object to the question, which objection was then and there sustained.

But to the ruling of the Court the defendants' counsel did then and there except.

Q. I will ask you this question—did you not in that report state that you found the testimony of the witnesses before the Court to be true?

But counsel for the Government did then and there object to the said question, which objection was then and there sustained.

But to the ruling of the Court the defendants' counsel did then and there except.

Q. Do you remember whether or not you made a report to the effect that you found the statement made before the Court commissioner to be untrue?

A. Yes, sir.

Q. I will ask you another question—where were you when you wrote up this report?

A. In the office of the Montgomery Advertiser.

Q. When did you leave here to go to Laurel Hill?

930 A. I either left here on the afternoon of the 30th or the 31st of July.

Q. You left here on the afternoon of the 31st of July?

A. Yes, sir.

Q. When did you come here?

A. On the morning of the 31st.

Q. Then you went to Laurel Hill, what time did you arrive there?

A. Arrived there in the early hours of the night.

Q. How long did you stay there?

A. I stayed there until the next morning—10 or 11 o'clock.

Q. That was on the first of August?

A. Yes, sir.

Q. Then you went to Florala—did you or did you stop at Florala?

A. Yes, sir.

Q. How long did you stay there?

A. I got in about eleven o'clock and went out to the camp about two o'clock in the afternoon, and got back to the hotel at early night.

Q. Then you spent one day practically in Pensacola, one day at Laurel Hill and Lockhart and the camps?

A. Yes, sir.

Q. And then did you return that night to Pensacola?

A. No, sir; I spent that night at the hotel.

Q. Where?

A. At Florala.

Q. Then, when did you come to Pensacola?

A. I did not come back to Pensacola; I went from there to Montgomery by way of Opp and Andalusia.

Q. Then you had talked to and heard the testimony of probably how many witnesses down here?

A. Well, my principal time spent in Pensacola was in examining the stenographer's report before the United
931 States Commissioner, and talking to the newspaper
men who had talked to the witnesses who came here, and looking over some newspaper files, and a quick run for the train. And at Laurel Hill, I got there at eight or nine o'clock at night, everybody nearly except the town marshal, had gone to bed, and so I went to bed. I got up the next morning early, about half past six or seven and spent from seven until eleven talking to several people there in Laurel Hill.

Q. Then you talked to a great many people up there as to this matter and as to other matters—you had conversation with outside people about other matters?

A. No, I talked to some men I met on this subject.

Q. You discussed no other subject with anybody else at all?

A. I do not know, I possibly might have made some incidentally; and might have talked with these people; we discussed the political campaign in Georgia and in Alabama.

Q. After that you went to Montgomery and you wrote up, one, two, three, four and a half columns of matter?

A. Yes, sir.

Q. You wrote up those columns of matter after having talked to numerous people and spent some two or three days in the solicitation?

A. Yes, sir.

Q. Do you think that you could remember accurately all that was said by the different people who made those statements?

A. Possibly not without some of the notes I took on the trip. If I had not taken any notes perhaps I could not. I have been eight years in the business, and have made a specialty for four years of this kind of work?

Q. That would depend upon the fullness of your notes?

A. No, sir; upon the thoroughness of my training.

Q. Has your training been such as to make you distinguish and put down the words to be used by various people, I mean the whole of it? 932

A. Well, possibly not; it has been a training that I think would bring me closer to accuracy in handling matters of that kind than the average newspaper man for the reason that I have done nothing else, except special writing, and that class of work I have been engaged in all the time.

Q. Do you think if you sat in this court room and heard the testimony of the witnesses, you would be able to go out and repeat all that was said accurately, everything?

A. No, sir; I could simply take a few long hand notes and tell the most of the points of the trial.

Q. You could not cover the exact language?

A. On those particular points I would cover the exact language.

Re-Direct Examination.

Q. I understood you to say yesterday, as to your information that you obtained from the company as to the employment of the men, their transportation, and the agent's fees, were obtained from Dr. Trammell?

A. Yes, sir; it had been mentioned, I believe, in a general conversation; Mr. Gallagher and I and two or three others were at the camp. The first notice I got of the cost of bringing the men down was from Dr. Trammell.

Q. As to a matter of testing your recollection, I will ask you this—In your general report it was, from your standpoint, fair and impartial; you had no prejudice or bias one way or the other?

A. No, sir.

Q. Do you have any recollection of having reported the Mihaly incident?

933 Q. That is the arrest of Trudich Mihaly down at Lockhart?

A. Near Laurel Hill, yes, sir.

Q. Is it your recollection that you did report that incident in the paper?

A. Yes, sir.

Q. Now, this report is your whole report of your investigation up there?

A. Yes, sir.

Q. You went there to investigate whether there was any peonage there?

A. Yes, sir.

Q. Is this part of your report:—

"The truth will be had. The charges against the Jackson Lumber Company are in the courts, where the workmen who make the charges and the company officers who deny them, will each have a day. In the meanwhile a thorough investigation made on behalf of the Advertiser has convinced me that while some of the accounts of the harsh treatment received by the men are true, that many of the sensational statements they made to the Court and to the Pensacola newspapers are not true. I believe that men fleeing from Alabama have been captured and brought back into Alabama. If this is established in the courts, such acts will be declared illegal. Employees of the company admit that in at least one instance this was done. Citizens of Laurel Hill, six miles in Florida from the Jackson Lumber Company's logging camp, assert that it has been done a half dozen or more times. They say this in conversation, but whether they will be willing to say so in Court remains to be seen."

Q. Is that your recollection of that report?

A. Yes, sir.

But defendants' counsel did then and there object to the testimony of the witness upon the ground that it is 934 the opinion of the witness; that it was an act done by the witness out of the presence of the defendants, and is irrelevant, immaterial, and could have no binding effect upon the defendants, or either of them, and is hearsay testimony, and an expression of the opinion of the witness.

But the Court did then and there overrule such objection, to which ruling of the Court defendants did then and there except.

Defendants' counsel did then and there move the Court to strike out the answer of the witness upon the ground that he made such a report because it is an act done by the witness not binding up on the defendants, and done out of their presence, and upon the further ground that it is an opinion of the witness.

But the Court did then and there overrule such motion, to which ruling of the Court defendants did then and there except.

Re-Cross Examination.

Q. Did you make this report: It is possible that some of the men that came down in the last consignment of laborers were kept at camp against their will, but if they were, there is no evidence of it except their word?"

935
Thereupon the Government, to maintain the issues in its behalf, recalled WILLIAM KELLER, who testified as follows:

Q. I believe you testified in the early part of this week, didn't you?
A. Yes, sir.
Q. You are one of the ones that came down from Savannah with Gallagher?
A. Yes, sir.
Q. You are one of the parties that left the car at Fort Valley—how many was in your party?
A. Five.
Q. Name them?
A. Louis Abraham, John Smith, John Drum, John Davis.
Q. Was Docks in your party?
A. No, sir.
Q. Did you see any Jews around the cars? Did you have any Jews or men with long whiskers around the car?
Q. I saw him ten feet off in conversation.
Q. Did you hear him talking to any of the other boys?
A. He was talking to them, but I could not understand.
Q. Not talking to any one in your party?
A. No, sir.
Q Well, you did not leave the car for the purpose of picking peaches?
Q. [A.] I never heard anything about picking peaches.

Q. Why did you leave the car?

A. I left the car because three or four negroes told us about Lockhart; it was a bad place to go to; they told us there was fever down there, and the water they drank was bad, and that is why we left.

936 Q. Were you with the party that came back in the night time? What time did you get back?

A. Got back at dark.

Defendants' counsel did then and there move the Court to strike out the statement of the witness as to what the negroes told him about Lockhart, which motion was then and there granted.

Q. You say you came back in the night time?
A. Yes, sir.
Q. Do you remember whether it was late in the night?
A. Yes, sir.
Q. You had come a distance of how many miles?
A. Several miles.
Q. Did you see Gallagher when you got back?

By the Court:
He has testified to all that.

Q. You did see Gallagher when you were brought back to the cars?

A. First we met the head sheriff, and he took us to the car, and Gallagher come running out of the car, and says: "Is this the five?" and says, "Lock them up," and the sheriff went over and spoke to Gallagher, and after this Mr. Gallagher says, "Come on and go to sleep, boys."

Q. You are certain it was Gallagher that said "Lock them up," and not the sheriff?

A. No, sir; it was Mr. Gallagher says "Lock them up;" he says that to the sheriff.

Cross-Examination.

Q. Don't you know that there was a conversation there; that this man had arrested you under the charge of vagrancy?

937 A. No, sir.

Q. And didn't he tell you when he arrested you—

A. No, sir; he says we got to go back to the car.

Q. Now, wait a moment—now, don't you know that Mr. Gallagher was told that sheriff when he was trying to turn these men over to him and undertook to exact something from him, and don't you know that that sheriff was talking to him, and says I will lock them up then, and don't you know that Mr. Gallagher says, Go ahead and lock them up.

A. No, sir; Mr. Gallagher come running out of the car and says to the sheriff, "Lock them up," and then the sheriff went over and spoke to Mr. Gallagher, and after that Mr. Gallagher says, "Go on in the cars."

Q. Had the sheriff spoken to Gallagher before that, do you know?

A. No, sir.

Q. Did you go in there with the sheriff?

A. Yes, sir.

Q. How close were you to him?

A. The sheriff was leading us right to the car, you see—

Q. And was Mr. Gallagher outside when he came up?

A. No, sir; he was in the car.

Q. Did you hear what went on in the car?

A. No, sir; I was not in the car then? Mr. Gallagher come running out and hollowed "Is this the five?"

Q. Did anybody go and wake him up at all?

A. No, sir.

Q. What time of night or day was it?

A. It was very late at night.

Q. After twelve o'clock do you think at night?

A. It was around that time.

Q. What time did you say you left the car?

938 A. It was in the afternoon we left the car.

Q. Was it after dark?

A. No, sir; it was not dark.

Q. Was it about sun down?

A. Just about five o'clock.

Q. The sun was about two hours high?

A. It sets about five o'clock I think.

Q. It was about sun down when you left; you had gone how many miles?

A. About nine miles.

Q. And then you had lain down and slept awhile?

A. Yes, sir; we asked the man inside if we could sleep, and he says all right.

Q. You don't know how long you slept?

A. No, sir.

Q. And then you walked back?

A. These two sheriffs that waked us up had a wagon, and two mules, and took us back.

Q. You drove back in a wagon?

A. Yes, sir.

Q. When you got back there Mr. Gallagher came out of the car, nobody went in and waked him up?

A. No, sir; I did not see anybody go in.

Q. He knew you were out there—he came out himself? Nobody called him or waked him?

A. No, sir.

Q. You are sure of that?

A. It was dark, you don't think we could see anybody call, do you?

Q. You could hear him?

A. We heard him jump off the car steps; we was about twenty feet away from the car when he hollowed out, "Is this the five?"

939 Q. You heard him hollow that out, that was the first thing you heard?

A. Yes, sir.

Q. You testified to this before the commissioner, didn't you? You were asked when you got back did he call Gallagher out, and you said, yes, sir, didn't you?

A. No, sir.

Q. The sheriff went off and talked to him?

A. Yes, sir.

Q. You testified to that?

A. No, sir.

Q. You say the sheriff did or did not go off and talk to him?

A. The sheriff did go off and talk to him, and Gallagher then says come in and go to sleep.

Q. Was it before—

A. As soon as we got to the car Gallagher come running out and Gallagher says "Is this the five?"

Q. And then what was said?

A. Then the sheriff said, yes, and he says, well, lock them up, and then the sheriff went over and spoke to Gallagher, and then Gallagher says, come in the cars and go to sleep.

Q. When was it they went off and had that talk?

A. Right where—we was standing about here, and he called him on the side.

Q. Did you hear what was said when he was called aside?

A. No, sir.

Q. You do not know what was said?

A. No, sir.

Q. You say now you testified that he was called out of the car?

A. No, sir.

940

Thereupon the Government, in order to maintain the issues in its behalf, recalled the witness JOHN DAVIS, who testified as follows:

Direct Examination.

Q. I believed you testified here the other day you were with Gallagher in the party that came over from Savannah to Lockhart?

A. Yes, sir.

Q. And stopped at Fort Valley?

A. Yes, sir.

Q. I believe you testified the other day that you were with the party of five—did you testify here the other day in this case?

A. Not in this case; the last case.

Q. You have been sworn?

By Defendants' Counsel:

Q. When were you sworn?

A. When the whole bunch was called in here.

Q. Two weeks ago?

A. When this case first started?

Q. This particular case?

A. Yes, sir.

By Government Counsel:

Q. You were with Gallagher at Fort Valley?

A. Yes, sir.

Q. How long did the car remain at Fort Valley?

A. I do not know the exact time; we got there on Sunday and Monday when we went away—I ain't sure what time.

Q. It was Monday when you ran away?

A. No, when the car left there.

Q. Did you stay with the car all the time you were there?

A. No, sir run away—five of us.

941 Q. Who was in the party that ran away?

A. William Keller, John Smith, Louis Abraham and Joe Davis, and myself.

Q. Did you go back to the car?

A. We did not go back ourselves, we were brought back.

Q. How were you brought back.

A. We went to the next station and went to sleep, and someone waked us up, and took us back.

Q. How were you carried back?

A. In a wagon.

Q. After you got back there did you see Gallagher?

A. Did not see him when I first got there.

Q. How soon after you got there?

A. When the sheriff started to bring us to the car, Gallagher come running out of the car.

Q. Did you see before you left there any one around the car talking to any one?

A. Yes, sir.

Q. Did you see a Jew talking to the men?

A. Yes, sir.

Q. Why did you run away from the car?

A. When we first stopped—

Counsel for defendants did then and there object to the said question, which objection was then and there sustained.

Q. Did you hear this Jew talking?

A. Yes, sir.

Q. What did he say?

A. He was telling all about the men being beaten in Lockhart and fever in Lockhart and heard that men were killed in Lockhart—

942

Defendants' counsel did then and there move to strike out the answer of the witness as to what had been told him, which motion was then and there granted.

Q. Were you enticed or do you know that the other five who ran away with you, were enticed to leave there by the Jew to pick peaches for him—enticed away?

A. No, sir; never heard of any such thing.

Cross-Examination.

Q. John Smith, Keller—what is Keller's real name?

A. William.

Q. William Keller, Louis Abraham, John Davis, that is yourself, and Joe Davis, are the people who went away?

A. Yes, sir.

Q. What time did you leave there?

A. Just about sundown.

Q. How far did you go?

A. Next station, about nine miles,

Q. Did you walk all the way?

A. Yes, sir.

Q. Did you stop on the way anywhere?

A. Twice on the way.

Q. What did you do when you stopped.

A. There was a shanty off the road, off the way, and we went up and asked the colored folks for a drink of water, and we stayed there talking awhile, and we went on from there and laid down again on the side of the station; that was the second stop; and laid down on the platform of the station after asking the agent about it.

Q. You went to sleep there?

A. Yes, sir.

943 Q. Who was present when you were having the conversation; was William Keller present down there before you left?

A. He was around there, but I do not know whether he heard the Jew speak or not; but there was some colored folks there telling him the same thing.

Q. You do not know whether he heard the Jew speak or not?

A. No, sir.

Q. Did you hear the colored people talking to him?

A. I was over there when they was talking.

Q. You were all together when the Jew was talking?

A. They were all around, but not up to us.

Q. How far from you?

A. About a yard or two away; scattered all around.

Q. Did you walk back to the car?

A. No, sir; we rode back.

Q. How?

A. In a wagon.

Q. What sort of a wagon?

A. Sort of a dray, sideboards all round, with two mules.

Q. And two sheriffs?

A. Yes, sir.

Q. When you got back what was done?

A. We stopped up in front of a big building and the head sheriff come up to us, and give us the choice of going back to Lockhart or going to jail, and we told him we would go back to Lockhart.

Q. Was that the guard house or the jail?

A. I do not know.

Q. What did it look like?

A. Looked like a big hotel.

Q. Was that where Gallagher came to you?

944 A. No, sir; the sheriff started to take us towards the camp, and Gallagher come running out of the car.

Q. How far were you from the car when he came up?

A. I could not tell you exact distance, I think about the distance across the room here.

Q. And they had some conversation?

A. Gallagher and the sheriff had a conversation, but I do not know what they said.

Q. And you could not hear what they were saying?

A. No, sir.

Q. How far did they go, did they go out far enough so they could hear what remarks they were making?

A. Yes, sir.

Q. How far did they go away?

A. I do not remember the distance just about now, but they went so far away I could not hear them. They walked away from us a bit.

Q. Did you stay together then?

A. Yes, sir.

Q. The other man had you in charge then, the other sheriff?

A. He took us and put us in the car; there was a sheriff all around the car all night.

Q. When the sheriff and Mr. Gallagher went off to talk, the other sheriff had you people in charge, did he?

A. There was two sheriffs there.

Q. And one sheriff kept you in charge while the other sheriff and Mr. Gallagher went off and talked?

A. Yes, sir; with the thin fellow there, who stayed around the car all night, and watched the car.

Q. The thin fellow stayed around the car all night?

A. Yes, sir.

945 Q. After you got back?

A. Yes, sir.

Q. You do not know whether he was there before you went away or not?

A. No, sir.

Q. Was he one of the men who brought you back?

A. No, sir.

Q. The fellow that stayed around the car and watched was not one of the men that brought you back?

A. No, sir.

Q. You heard some conversation, didn't you, before they went back and took you inside?

A. Between who?

Q. Between Mr. Gallagher and the sheriff.

A. That was after they had brought us back.

Q. Did you hear any conversation between Mr. Gallagher and the sheriff?

A. No, sir.

Q. You did not hear any at all?

A. No, sir.

Q. At any time?

A. They walked off and spoke; I did not hear what was said.

Q. After that did you hear them talking?

A. No, sir.

Q. Did you hear them talking before that occurred?

A. I did not hear them at all.

Q. Did you hear anything that they said?

A. No, sir.

Q. He just simply came back and hustled you in the car?

946 A. They spoke to us and give us the choice of going back to Lockhart first, and then hustled us in the car.

Q. What was told you?

A. Told us if we did not go back to Lockhart we would have to go back to jail.

Q. That was the sheriff who told you that?

A. Yes, sir.

Q. How was the sheriff dressed?

A. No, sir.

Q. Do you know what his name was?

A. No, sir.

Q. How long have you been going by the name of John Davis?

A. About a year.

Q. What is your real name?

A. Well, my real name is simply J. Slicker. My mother got married and I go by the name—my mother married twice, and I go by both names.

Q. When was your mother married?

A. Last April a year ago.

Q. And the man she married was Davis?

A. Yes, sir.

Q. Now, was this Joe Davis in the crowd your brother?

A. No, sir.

Q. You say this man when you got back to the car was guarding it?

A. The thin fellow was guarding it and he guarded the car all night.

Q. You did not sleep in that car?

A. Gallagher told us to go in and go to sleep, and we sat down on the seats and tried to go to sleep.

Q. You did not go to sleep at all?

A. No, sir.

947 Q. You never did get to sleep during the night?

A. I got a little sleep—the best part of the night I was up and noticed he was around the car; when we got out in the morning he was there.

Q. How was he armed?

A. I did not see; I know he was swinging a club in his hand.

Q. Like a policeman?

A. He was not dressed like a policeman; he was in plain citizens' clothes.

Q. What sort of a club was it?

A. Looked kinder like a policeman's club.

Q. Did he say anything to you boys?

A. Not to me.

Q. Did you hear him say anything to anybody?

A. No, sir.

Q. How long have you known William Keller?

A. About three years.

Q. How long have you known John Smith?

A. I did not know him at all until Saturday down here.

A. [Q.] Is John Davis any relation to you?

A. No, sir.

Q. After you were brought back and placed in the cars do you know whether any persons left the car after you got back?

A. Yes, sir; there was eleven others left the car, not after we got back, but while we were gone. When we got back we found they were gone.

Q. You did not see them?

A. No, sir.

Q You do not know of your own knowledge, except you know you left them there, and when you got back they were not there?

A. Yes, sir.

Q. Now, when you got—how long did you work up at the log camp at Lockhart?

A. I left Lockhart around the 18th of October.

Q. You knew of these facts of course all along
948 that you now testify to?

A. No, sir; I know them myself.

Q. Where have you been for the last three or four weeks?

A. In Pensacola.

Q. Where?

A. Working in Pensacola.

Q. What have you been doing?

A. Up here for B. A. Davis, stone worker, Palafox street. Been helping around.

Re-Direct Examination.

Q. You have not been in jail with any of the other witnesses?

A. No, sir.

Q. When you were waked up by this sheriff did they say anything about you being vagrants?

A. No, sir.

Q. Did they say they had any warrants for you on account of vagrancy?

A. No, sir.

Q. When you reach the cars when you came back, you say Gallagher came out of the car?

A. After they started to bring us towards the car he came running out.

Q. Did Gallagher say anything as he came out of the car?

A. I do not remember, but it seems to me he said something like "Lock them up."

Q. Was that before he had the conversation?

A. That was as he came out of the car, and then the sheriff called him aside.

Thereupon the Government recalled the witness JOHN SMITH, who testified as follows:

Direct Examination.

Q. Your name is John Smith?

A. Yes, sir.

Q. You testified the other day in this same trial, didn't you?

A. Yes, sir.

Q. I believe you said you were with the party at Fort Valley, Georgia, when Gallagher brought you over from Savannah?

A. Yes, sir.

Q. I believe you testified there were five of you who ran away?

A. Yes, sir.

Q. Before you ran away that night or evening, did you see any man around the car talking to the men?

A. Yes, sir; there was two men around there talking to us; they were talking to the Jewish fellows.

Q. You heard their conversation?

A. No, sir.

Q. They were Jews, were they?

A. Yes, sir.

Q. Did any of those Jews notice you to run away and leave the car?

A. They did not speak to me, but we were talking to a colored fellow right opposite?

Q. Did any of them employ you to go and pick peaches?

A. No, sir.

Q. Now, when you were brought back what time was it you came back?

A. Two o'clock in the morning.

Q. I believe you testified the other day you were
950 brought back by two sheriffs in a wagon?

A. Yes, sir.

Q. When you got to the car, did you see Gallagher?

A. Mr. Gallagher come running over and says, "Is that the five," and the sheriff says, "Yes," and he says, "Lock them up."

Q. Who says, "lock them up?"

A. Gallagher, and then the sheriff walked across and whispered something in his ear, and Gallagher says then all right boys, come in the cars and go to sleep.

Q. Before you got to the car, did the sheriff take you anywhere else?

A. No, sir; there was a guard over us all night; the sheriff put a guard over the car.

Q. That was after they brought you to the car, and you went into the car?

A. Yes, sir.

Q. Did not you stop in the guard house?

A. Yes, sir; that is where they had the conversation telling us—the high sheriff—what are you going to do now, are you going on the chain gang for six months or are you going to Lockhart.

By the Court:

What the high sheriff said is stricken out.

Q. After you saw the high sheriff you were taken down to the car?

A. We had a little talk in front of the guard house.

Q. Don't state what the sheriff said.

Cross-Examination.

Q. The sheriff held you and put you out of the wagon near a big building?

A. Yes, sir.

Q. How far was that from the car?

951 A. I could not just exactly tell how far; it was a longer distance than this building.

Q. Is that where Mr. Gallagher came to you?

A. Yes, sir.

Q. Did you say they went away and had some conversation?

A. Yes, sir.

Q. Mr. Gallagher and the sheriff?

A. Yes, sir.

Q. The other sheriff kept you in charge?

A. Yes, sir.

Q. How far did they go?

A. About as far as that second high chair.

Q. So you could not hear them?

A. Yes, sir.

Q. They were close enough if they had been talking in audible tones you could have heard them?

A. Yes, sir.

Q. When was it Mr. Gallagher said "Lock them up?"

A. As soon as he came out of the car and found out that we were captured.

Q. Do you know what time of night it was when you got back there?

A. Around two o'clock in the morning.

Q. Did you have a time piece or use your best judgment?

A. Best judgment.

Q. Did somebody go down and wake Mr. Gallagher up?

A. Not that I know of.

Q. You do not know whether they did or not?

A. No, sir.

Q. Did he come out of the car?

A. Yes, sir.

952 Q. He came up there and told the sheriff to lock you up?

A. Yes, sir.

Q. Did he call the sheriff or did the sheriff call him away?

A. I ain't sure.

Q. When you left there, where did you go?

A. To Lockhart.

Q. I mean when you ran away?

A. We walked to the tracks to the next station.

Q. You walked right along without stopping?

A. Yes, sir.

Q. You never stopped at all?

A. No, sir.

Q. Did you pass any house?

A. There was some on the road there, a couple of houses.

Q. You did not stop at those houses?

A. No, sir.

Q. You never stopped about them?

A. We stopped at one colored place and got a drink of water.

Q. Did you stop anywhere else?

A. We asked what time it was at one house and how far it was to the next station.

Q. You went down and went to sleep and got back you think about two o'clock in the morning?

A. Yes, sir.

Q. How far did you come back?

A. The sheriffs cone [come] after us; we were asleep.

Q. Did you walk back?

A. No, sir; they took us back in a wagon.

Q. What kind of a wagon?

A. An open wagon with two mules.

Q. Two sheriffs?

953 A. Yes, sir.

Q. Don't you know that that sheriff was threatening to put you all in jail unless Mr. Gallagher would do something that he requested him to do, and did not Mr. Gallagher say he would not do it, go ahead and put you in jail?

A. We asked that sheriff that brought us back what he was going to do, if he was going to put us in jail and he said no.

Q. Mr. Gallagher was not there?

A. No, sir.

Q. I don't want that, then.

Defendant's counsel did then and there move the Court to strike from the answer of the witness what the sheriff told him out of the presence of Mr. Gallagher; but the Court did then and there overrule said objection, to which ruling of the Court defendants did then and there except.

Q. You say there was a guard over that car all night?

A. We slept in that car that night

Q. You did not know whether there was anybody there or not?

A. He was told to guard us over night by the head sheriff.

Q. Was Mr. Gallagher there?

A. Yes, sir.

Q. Mr. Gallagher was there when the sheriff told the man to guard the car?

A. Yes, sir.

Q. That was after you got back?

A. Yes, sir.

Q. And the sheriff said in the presence of Mr. Gallagher that he was to guard that car during the night?

A. If I am not mistaken, Mr. Gallagher asked for the guard. 954

Q. You are quite sure of it, ain't you?

A. I am not quite sure of it.

Q. Do you remember that statement having been made before you went in the car or afterwards about the sheriff going to guard the car?

A. Yes, sir.

Q. While you were out there on the ground?

A. Yes, sir.

Q. While you were up to this building?

A. No, sir; right around the car.

Q Had any of the others gone into the car?

A. Yes, sir.

Q. All had gone in but you?

A. We all went in.

Q. I mean at the time this statement was made, you say you were outside of the car?

A. All were outside of the car when that statement was made.

Q. And none had gone in?

A. We all went in together.

Q. How long was it before you went in the car, that that statement was made?

A. I do not remember that.

Q. As you were going up the steps at that time were you actually entering the car?

A. I do not know that.

Q. You know that you were all there together at the time the statement was made?

A. Yes, sir.

Q. You were on the stand and testified substantially these transactions the other day?

[Q.] You did not testify to anything like that at that time, did you? 955

A. I was not asked.

Q. Were you asked this time?

A. I just thought of it?

Q. You never thought of it before?

A. No, sir.

Q. Never occurred to you any time before?

A. No, sir.

Q. Now, these boys who were with you, William Keller, Louis Abraham, John Davis and Joe Davis—

A. Yes, sir.

Q. Do you know the Davis boys?

A. Yes, sir.

Q. Did you know them before they came down here?

A. Yes, sir.

Q. Did you know them in New York?

A. Yes, sir.

Q. Are they any relation to you?

A. Not to me.

Q. To each other?
A. I do not know that.
Q. You knew them in New York?
A. Yes, sir.
Q. Both of them?
A. Yes, sir.
Q. Where did you live in New York?
A. When I left New York, I was living at 17 East Side.
Q. Where is that?
A. On the east side of New York City.
Q. Down next to the river?
A. No, about five blocks away from the river.

Q. The Davis boys had been out there in the hall ever since this trial has been going on? 956

A. One of them?
Q. Which one?
A. Small one, Joe Davis?
Q. The other one has not been there?
A. No.

Re-Direct Examination.

Q. Where did you see John Davis, last?
A. Well, I saw him a couple of months ago in jail.
Q. As a witness?
A. Yes, sir.
Q. Joe Davis?
A. Yes, sir.
Q. Was he released?
A. Yes, sir.
Q. Where did he go?
A. New York.
Q. How long ago?
A. About three months ago, I think.

Q. Do you know some of the witnesses for the defense, out there?

A. Yes, sir.
Q. A good man [many] of them you knew at Lockhart?
A. Yes, sir.

Q. You have seen them out in the hall during all of this trial?

A. Yes, sir.

Re-Cross.

Q. Was John Davis in jail a while, too?

A. Yes, sir; nineteen days.

957

Re-Direct Examination.

Q. That was the one that was released?
A. Yes, sir.
Q. The one who testified out here was not in jail at all?
A. No, sir.

Thereupon the government, in order to maintain the issues in its behalf called as a witness, one W. A. J. POLLOCK, who having been duly sworn, testified as follows:

Direct Examination.

Q. What is your profession?
A. Practicing medicine?
Q. Do you hold any employment or appointment from the government for any purpose?
A. Yes, sir.
Q. What is that?
A. Prison physician?
Q. Were you such in the month of August of this year?
A. Yes, sir.
Q. Do you know a Bulgarian, by the name of Manuel Jordsman?
A. Yes, sir.
Q. Were you called to treat him in the month of August?
A. Yes, sir.
Q. Did you see him here when he was a witness in the case before Mr. Marsh?
A. No, sir.
958 Q. Do you know about how long, whether the case was then under investigation or how long afterwards?
A. I do not know.
Q. Can you refresh your memory and tell what date you were called to see him?
A. I think the seventh of August, the first time I saw him.
Q. Where did you find him?
A. It was a house on West Romana Street.
Q. What did you find his condition?
A. I found him in bed with fever and suffering very much from his leg.

Q. He had fever?

A. Yes, sir.

Q. Did you reduce that fever?

A. Yes, sir.

Q. How?

A. I thought the temperature was due to the condition of the limb, his leg was swollen very much and inflamed, and I opened the limb and let out possibly a good portion of the pus, possibly a pint, and the temperature commenced to drop after that, showing that his temperature was due to the local cause.

Q. How long after the reduction of this pus was it before the reduction of the fever came?

A. I suppose in twenty-four hours time the temperature was normal.

Q. In twenty-four hours, normal?

A. About that time.

Q. Can you state whether or not he was suffering from typhoid fever at that time?

A. No, sir.

Q. Did you examine his leg pretty closely at
959 the time you lanced it?

A. Yes, sir.

Q. What were the indications of that leg as to the cause of the inflammation?

A. I thought at the time it was from bruises.

Q. That is what you call trometism?

A. Yes, sir.

Q. Had there been any abrasion of the skin?

A. No, sir.

Q. Were there signs, any marks that indicated?

A. Only black-bluish bruises of the limb just below the knee, down to the base of the toes was swollen so that the toes were nearly covered, and all on the leg was large black and blue spots.

Q. From those conditions, that is, there was no skin broken nor any abrasions, how would-that injury have been inflicted ordinarily?

A. As I said awhile ago, I though it was—at the time I knew nothing of the man, and could not make him understand anything of the kind, I just had to use my own judgment—I thought it was due to trometism or bruises.

Q. When was the man removed from the boarding house?

A. He was taken to the hospital and then from the hospital to the jail.

Q. The place on the man's leg was not an open running sore?

A. Not when I got it.

Q. You opened it and let out the pus?

A. Yes, sir.

Q. Where was it you discovered the blue places?

A. On his leg.

Q. How far from the opening you made?

960 A. They were spots about in different places on his leg.

Q. Were there any at the point where you opened it?

A. I do not remember now. I opened it at the point where it showed the soft places as though it was about to break, and I opened it and evacuated the pus out.

Q. How many blue places did you notice?

A. I did not count them.

Q. It was not one solid blue?

A. No.

Q. But simply blue places here and there?

A. Yes, sir.

Q. As many as half a dozen?

Q. I could not say how many there was positively, because I didn't count them. At the time it was red and inflamed, all these spots about on it, different sizes and different locations.

Q. What was the immediate cause of these blue places; what would cause them to look blue?

A. I should say trometary injury caused them.

Q. Explain to the jury what you mean?

A. From a blow or a kick or anything of that kind.

Q. I know a blow will do that, but there must be some process after the blow to cause that?

A. The blow under the skin will cause—

Q. Explain that to the jury in language they will understand?

A. From a trometary injury, a bruise, blow upon the skin, the blood vessels become ruptured and the blood becomes clodded.

Q. And the blood inside taking its usual course through the ducts whenever they are broken the blood stops when it reaches those infractions and becomes clodded—is that true?

A. Yes, sir.

961 Q. What is known as clodded blood and new skin when it is clodded under the skin like that, it looks blue after having become clodded?

A. Yes, sir.

Q. How does that pass off?

A. It can break and form pus, or might be absorbed, taken back into the circulation.

Q. It may be passed back into the circulation?

A. It depends entirely upon the condition, for instance, a man receiving a blow on the eye, it will become black and blue, but in the course of time you do not have to open it, it is absorbed and taken back into the circulation.

Q. Does that condition result from any condition other than from a blow or bruise?

A. I suppose it could do it.

Q. What other causes would produce such a condition of affairs that you know of?

A. It is hard to say just exactly, right now.

Q. There are some other causes are there not that will produce the same condition of affairs, the same appearance?

A. I do not know any that I recall right now.

Q. You say there must be a blow or bruise or some external force to break down the tissues and thin ducts?

A. I think in the condition the limb was in when I saw it that it must have been due to some external force, some blow, something of that kind to produce the condition it was in when I saw it.

Q. You think that, though, from the appearance of the wound in the leg, don't you?

A. The limb at that time; yes sir.

Q. Give me all the appearances that lead to that conclusion?

A. From the general condition, the swollen, inflamed, red and black and blue appearance, led me to believe it was due to external violence.

962 Q. All of these conditions might have been, might they not, without any external force being applied?

A. I do not know that they could.

Q. Can you say whether that man had had typhoid fever or not?

A. No, sir; I do not know whether he had had typhoid fever before this or not, but I do say he did not have typhoid fever when I saw him.

Re-Direct Examination.

Q. Did you find the leg in condition at the time from the swelling that the toes were covered up almost?

A. The top of the foot was swollen at the base of the toes, front and back almost from the base of the toes, and that extended below the knee.

Q. Did you apprehend at the time of your first investigation that it might take amputation?

Defendant's counsel did then and there object to the said question, but the Court did then and there overrule the same, to which ruling of the Court, defendant's counsel did then and there except.

A. Yes, sir; I did.

Q. From the condition of the man at the time, did you think he had had typhoid fever within two or three weeks?

A. Well, that is a question I could not very well answer; he was in a very emaciated, run down, weak condition [illegible] course, that condition could follow typhoid fever.

Q. What is the course usual in your experience and your knowledge of the course of that disease; how long does it take typhoid fever usually to run its course?

A. Typhoid fever will run anywhere from three to four weeks to as many months.

963 Re-Cross Examination.

Q. Are there various types of typhoid fever?

A. Various types?

Q. Yes, sir.

A. No, sir; there are different stages.

Q. But not different types?

A. No, sir.

Q. And there are not different types in medical works?

A. Not that I know of; I only know typhoid conditions, and when you speak of typhoid fever there is only one typhoid fever.

Q. It manifests itself in various ways?

A. Yes, sir.

Q. Sometimes in one way and sometimes in another?

A. Usually runs pretty much the same course, some symptoms with typhoid fever that does not always show in other cases.

Q. Sometimes one symptom and sometimes another; is there such a thing as .... typhoid fever?

A. You mean walking typhoid fever?

Q. Yes, sir.

A. I have heard of typhoid walking fever but I have never seen a case.

Q. You do not mean to say because you have not had a case—

A. I do not mean to say there are no such cases, but I have not run upon one.

Q. Just about where on the leg, indicate where the particular part of the bruises were?

A. I opened one place about here, and from here to the top of the toe, the whole limb was involved.

964 Q. The severity of that trouble would depend a good deal would it not at the time you saw it from the intervening influences from the time he received the wound?

A. I do not understand the question exactly.

Q. The condition of the limb like that was, would depend entirely—would that indicate entirely, accurately, the amount of force that was applied in receiving the bruise?

A. Not necessarily.

Q. That condition might arise from intervening influences might it not?

Q. [A.] I do not just catch what you are driving at.

Q. I mean this, I might receive a very slight blow and you might conduct yourself in such a way as to inflame and aggravate the condition and the aggravation might be as much due to the subsequent condition and influences as to the original blow?

A. That is hard to say; I do not think a slight blow will produce the condition this man's limb was in when I saw it.

Q. But as I say as a matter of fact, it might be that he received a blow and a condition which you say it would depend a good deal on how the patient had been conducting himself, what other influence had been brought to bear upon him as well as the force applied, would it not?

A. I do not know how to answer that.

Q. You do not know whether it would be affected or not? Can you tell from looking at a wound like that, the degree of aggravation, the amount of force applied?

A. No, sir.

Q. You cannot tell from looking at it about how much force was applied?

A. You could judge whether it was a severe force or a mild one.

965 Thereupon the government called as a witness, one NATHAN SCOTT, who being duly sworn through the interpreter, testified as follows:

Louis Friedman, Interpreter.

Direct Examination.

Q. What is your name?
A. Nathan Scott.
Q. What is your nationality?
A. He is a Russian?
Q. Is he a Hebrew or a Jew?
A. He is a Russian Jew.
Q. Ask him if he was ever at Fort Valley?
A. Yes, sir; he was there, as he was going from Savannah to Lockhart.
Q. Did you leave the train at Fort Valley?
A. Yes, sir; they all left the train, run away.
Q. Where was that train going to when they left there?
A. Towards Lockhart.
Q. Do you know Mr. Gallagher?
A. Yes, sir; he knows Mr. Gallagher; he took him from Savannah, took them from the ship and took them to Lockhart.
Q. Did any of the boys leave the cars at Fort Valley?
A. Yes, sir; they left with him—all Jewish boys, with the exception of two, and one don't think left with him.
Q. How many were you in that party?
A. About ten men.
Q. How far did you go?
A. They were about a mile and a half beyond the city and stayed all night.
Q. What time did you return from the car?
966 A. They come between seven and eight o'clock next morning by two deputy sheriffs.
Q. Did you see Gallagher when you got there?
A. As the deputy sheriffs brought them back they met Gallagher standing near the car on the outside.
Q. What did Gallagher say to you when you got back to the car?
A. He says Mr. Gallagher was talking something, but he did not understand English, and don't know what Mr. Gallagher said.
Q. Did anybody tell you to get back in the car when you came back with the sheriffs?

A. Says the sheriff told them to go in the car, if not why they might have six months, they would put them in prison for six months.

Q. Ask him if Gallagher was present when that was said?

A. He told him at the time as they was bringing them back.

Q. But not when Gallagher was present?

A. No, sir; he was not present at the time.

Thereupon the government's counsel asked that the answer of the witness be stricken out, which motion was granted.

Q. Did the sheriff read any paper or any warrant to them?

A. He says he did not see any papers nor hear any papers read to them; simply the sheriff spoke to them, and pointed two revolvers and told them to go back.

Q. Did you see a long-whiskered Jew around the cars before you left?

A. He seen more than one there with long beard, but do not know whether he was a Jew or not.

Q. Did you talk to that man?

A. He talked to all of them, this party, this man, with the long beard. He told them that they were whipping them at the camp.

967 Q. Was Gallagher there?

A. Gallagher was not there at all when that conversation took place.

Q. Were you hired by anybody there to pick peaches or leave the car?

A. Nobody told them anything about that at all.

Q. When did you get to Lockhart?

A. He don't know for sure, but thinks it about Tuesday evening they got to Lockhart; they got to Lockhart at one o'clock, he calls it, at night.

Q. Did you know the big Bulgarian?

A. He knows him, comes with him in the same ship and the same car all the way through to Lockhart.

Q. Did you see him in any difficulty with Gallagher; where were you at the time you saw the big Bulgarian and Gallagher in conflict?

A. He was standing on the platform; it seems there was a platform where they issue tickets at the office and he saw Gallagher take the Bulgarian in and whip him.

Q. Look at this drawing and see whether or not you recognize that as the car platform?

A. Yes, sir.

Q. Now point out where you were?

A. He says he stood in this direction and looked in this window.

Q. Where did you first see Mr. Gallagher and the Bulgarian?

A. He says he has seen through the window where Mr. Gallagher pulled him in and took him in his office and after awhile he says he didn't want to look at it any longer, and he ran away; he didn't care to look at it any longer.

Q. Just describe what you saw Gallagher do?

A. He was standing on the platform and seen where Gallagher took the man in and whipped him and then
968 ran away.

Q. Did you see any kicking done by either of the parties?

A. He has seen Gallagher kick him with hand and foot, and then he run away; he didn't stay there until the end.

Cross Examination.

Q. Are you an orthodox Jew?

A. He don't know what orthodox Jew means?

Q. Will the interpreter please explain to the witness the meaning of orthodox Jew?

A. He is a reformed Jew. He is not one of those religious Jews; he eats pork and so on and so forth.

Q. When did you reach America?

A. Eleven months ago.

Q. Where have you been during the time intervening between your arrival in America and your starting for Lockhart?

Counsel for the government did then and there object to the said question as not being in cross examination, and the Court did then and there sustain such objection. But to the ruling of the said Court the defendants did then and there except.

Q. Do you understand any English at all?

A. He understands a few words.

Q. How long since you learned those few words?

A. He was in camp three and a half months, and was working with English people, and got on to some around in camp.

Q. You have learned what English you know since you came to Lockhart?

A. Yes, sir.

Q. You knew no English at all prior to the time of coming there?

969 A. He says he had studied from a book a few words before he got to Lockhart but he could not talk at all.

Q. Could you understand anybody else when they spoke to you?

A. He did not understand any English before he got to Lockhart. He may have understood a word, but he did not understand a conversation.

Q. In what language did this man with the long beard at Fort Valley speak to you?

A. That man was talking to a friend of his in English, and that friend told this man what he was talking about.

Defendants' counsel did then and there move the Court to strike out the testimony of this witness as to what the long-whiskered man said about picking peaches, which motion was then and there granted.

Q. When these deputy sheriffs you speak of met you did they speak to you in a foreign language?

A. The sheriff was talking to all of them, and there was in the bunch some people who understood English thoroughly; was talking English and they told him all about it, what the sheriff was speaking to them, what the sheriff said.

Defendants' counsel did then and there move the Court to strike out all that was said by the sheriff as narrated by this witness, which motion was then and there granted.

Q. You do not know anything that was said to you when they came up, when these persons came up?

A. He understood a few words, did not understand it all, understood a few words.

Q. What were those words?

970 A. Must go back to the car, that is what he understood.

Q. Did you understand that from any language he used or from his manner?

A. He understood when the sheriff told him he is got to go back to the cars.

Q. Did he understand that from the language he used or from his manner and jestures?

A. He understood it right from his language, and says he understood it right from his mouth.

Q. Didn't you say just now that you understood it from a friend?

A. He understood that from the sheriff himself.

Q. How came you to be standing on this platform at this window by this car?

A. He saw people running towards that way and he was running to see what was going on.

Q. Was anybody else at that window beside you?

A. He don't exactly remember; he says when he stood there he stood there by himself; he don't exactly remember if anybody was there with him or not.

Q. Do you know your heighth?

A. He never measured himself, he don't know.

Q. Were you standing on anything other than the platform?

A. He don't remember if he stood on anything outside of the platform but he could see everything that went on in the office.

Q. How high was that platform from the ground upon which you stood?

A. He says about the same distance as from this floor to the top of this chair; possibly a little lower or higher, he cannot say.

Q. Do you know John Foster?

A. He knows him and come together from New York.

Q. Did he come about that platform while you were standing on it?

A. He may be was there, he don't know; he was there
by himself; he only stood there a little while; he
971 ran away because he was hurt.

Q. How close were you to the window?

A. Right close to the window.

Q. Were you within six inches of it?

A. Right at the window.

Q. Right up against it?

A. Right up against it.

Q. How wide is that window?

A. About as wide as from where my finger indicates long, perhaps a little broader.

Q. Was that the ordinary car window?

A. He don't know anything about that; that is the window from the office; when he got there that window was already there; he does not know whether it was an ordinary car window or not.

Q. Was the window in an ordinary car?

A. Yes, sir; he says it war partitioned off for an office.

Q. Was there more than one window on the side of the car you were on?

A. He don't remember, he only remembers seeing but one window.

Q. How high is that window from the platform upon which you stood?

A. It struck him about to his neck the window did.

Q. Indicate on this diagram where these parties were when you saw the first act of violence?

Q. [A.] There is where he seen the first fight, and then seen his taking him over this way.

Q. Where was Mr. Gallagher before you saw them commence fighting, immediately before?

A. He took and pulled him in from here into the office, but he don't know where Mr. Gallagher was before; he didn't see him.

972 Q. Did you see Mr. Gallagher when he first took hold of the Bulgarian?

A. He only seen him when he took him in the office and whipped him, that is all he has seen.

Q. Where were they when you first saw Mr. Gallagher take hold of him?

A. Right near the door.

Q. Was there a desk in that office?

A. Yes, sir.

Q. Where?

A. He could not exactly say on this drawing, but it was in a corner.

Q. What time of day was it you noticed this encounter?

A. He says he don't know exactly, it was dinner time, between twelve and two o'clock.

Q. Had you had dinner?

A. He had dinner.

Q. Was anybody else in the office besides Mr. Gallagher and the Bulgarian?

A. He don't exactly remember, but he thinks there was a young man Gallagher and the Bulgarian.

Q. Could you see the floor of the car?

A. Yes, sir.

Q. Are you sure that you saw Mr. Gallagher do anything with his feet?
A. He kicked him with his feet and hit him with his hands, with his fists.

973 Thereupon the government called as a witness one LOUIS DOX, who, having been duly sworn through the interpreter, testified as follows:

Louis Friedman, interpreter.

Direct Examination.

Q. What is your nationality?
A. Jew.
Q. Were you ever at Fort Valley?
A. Yes, sir.
Q. Do you know Mr. Gallagher?
A. Yes, sir.
Q. Did you see Mr. Gallagher—where did you see him the first time?
A. Savannah.
Q. Was he with you from Savannah to Fort Valley?
A. Yes, sir.
Q. Did you leave the car, the train at Fort Valley?
A. Yes, sir.
Q. Where did you go?
A. They ran away.
Q. How far did you get?
A. Just about a half mile from the little village.
Q. What time did you go back?
A. We ran away at night and returned the next morning between seven and eight o'clock to the best of my knowledge.
Q. Could you speak English at Fort Valley?
A. He understood a few words of English at Fort Valley.
Q. How did you come to return to the car?
A. Two sheriffs brought them back.
Q. Did the sheriffs have anything in their hands?
974 A. They had pistols.
Q. Was Mr. Gallagher at the car when you got back?
A. Yes, sir.
Q. Did you see Mr. Gallagher and the sheriffs talking?
A. Yes, sir.

Q. Could you understand anything that was said by either the sheriffs or Mr. Gallagher?

A. He understood one word when they was talking; Mr. Gallagher was talking to the sheriff, and that word was to stay by the car.

Q. Did you go into the car?

A. Yes, sir.

Q. Did you see before you left—what time of day did you leave the cars when you ran away?

A. It was about eight o'clock in the evening.

Q. Had you hired or induced to leave the car to work for anybody else? Did you leave the car to go to pack or pick peaches for anybody?

A. He did not.

Q. Where did you go to from Fort Valley?

A. They went on the train?

Q. Where to, did you go to Lockhart?

A. They took him to Lockhart and from Lockhart out in the woods.

Q. Ask him if he saw Gallagher out at the camps?

A. He was right there with him.

Q. Do you know the Bulgarian?

A. Yes, sir.

Q. Was the Bulgarian in his party on the same trip from Savannah?

A. Yes, sir.

Q. Did you see Mr. Gallagher and the Bulgarian fight?

A. Yes, sir.

975 Q. Now state briefly what time of day was it?

A. The dinner time.

Q. Where were you when the fracus began or the fuss? What were you doing at the time?

A. Sitting here at the table eating dinner and the first I noticed Gallagher took hold of him and pulled him in the office, and was there where he kicked him with his feet and hit him with his fist; at the beginning he was sitting down, but when the fight was going on he got right up and stood right there at the place where he was sitting before.

Q. Ask him if there are not doors between the dining cars and the office where Gallagher carried the man?

A. There was screen doors, wire doors, but the door was open.

Q. Where were the two men when you first saw them?

A. He saw them first where he indicated on the platform and from there he saw them in the office where he kicked him.

Q. Ask him if he means pulled or pushed?

A. He pulled him in.

Q. When did you leave Lockhart?

A. About three months ago.

Q. Have you a trade—what is your business?

A. He is a baker by trade.

Cross Examination.

Q. When did you come to America?

A. This is the second year he is in America?

Q. How many languages do you speak?

A. The German, Jewish, and he speaks the Polish language.

Q. You understand German, do you?

A. Yes, sir.

976 Q. How long did you remain at the camps at Lockhart?

A. Five weeks.

Q. Were you there the latter part of July?

A. Yes, sir.

Q. Did you see Mr. Gallagher when he first took hold of the Bulgarian?

A. He was not on the outside; he saw when Mr. Gallagher had the Bulgarian by the neck.

Q. Didn't he take hold of the Bulgarian on the platform?

A. He only seen where Mr. Gallagher brought the Bulgarian in; he has not seen when he first took hold of him.

Q. What is the width of the dining car?

A. A little smaller than the table before you?

Q. Was it as wide as that?

A. About that.

Q. Is that dinner table in the center of the car?

A. Yes, sir.

Q. How close is the end of the table to the door?

A. About three feet.

Q. How far were you from the end of the table?

A. About three feet.

Q. Was anybody between you and the end of the table?

A. One man was sitting next to me towards the end, and then the end of the table.

Q. Do you mean that there was a man sitting on the same side next to the end?

A. The man was sitting at the end and he was sitting next to that man.

Q. Were there several people eating at that dinner table?

A. A good man [many] people had already left the table.

Q. Were there a good many still at the table?

A. About ten of them was at the table yet.

977 Q. Was there a general rush for the door when that encounter began?

A. Nobody went to the door.

A. [Q.] Was anybody standing in the door?

A. No, sir.

Q. Nobody was standing in that dining room door—do you know William Keller?

A. No.

Q. Do you know the five boys that ran away from Fort Valley—any of them?

A. He knows them.

Q. Was not one of those boys standing in the dining room door when that difficulty occurred?

A. He has not seen anybody, he don't remember.

Q. What is the width of the door of the dining room car?

A. About four feet.

Q. What is the width of the door leading into the office?

A. The same door the same width.

Q. Were there any screens to the door or shutters?

A. Wire doors, screen doors.

Q. Do you know John Foster?

A. Yes, sir.

Q. Did you see him about there anywhere?

A. He has not noticed anybody—taken any particular notice.

Q. Did Mr. Gallagher strike the Bulgarian any licks before he got him back into the office?

A. No, he don't know; he saw where he pulled him in but didn't hit him.

Q. You saw him strike him after he got him into the office?

A. Yes, sir.

Q. Was anybody in the office with Mr. Gallagher and the Bulgarian?

978 A. He has not seen any.

Q. Did anybody go in there while the fight was going on?

A. No, sir; he has not seen any.

Q. Did Charlie Haas come down in your party?

A. Yes, sir.

Q. Did you see Charlie about there anywhere?

A. He was around there, he saw him standing near the table.

Q. Was he at the dining table at the time you were?

A. He was there eating then, and he was between the two doors in the dining car, Charlie Haas was.

Q. Do you mean in the platform between the office and the dining car?

A. He cannot exactly saw [say] where he was standing.

Q. Indicate on that diagram where Charlie Haas was standing?

A. Charlie Haas was standing around here.

Q. Was anybody on this platform between the cars other than Charlie Haas?

A. He don't know, he has not seen anybody but Charlie Haas.

Q. Are you sure you saw Charlie Haas there?

A. He is sure he seen Charlie Haas. He don't know on what side he was standing, but he knows he was standing there somewhere.

Q. Can you say that there was anybody else on that platform except Charlie Haas, Mr. Gallagher and the Bulgarian?

A. He has not noticed so particularly but he was simply watching Mr. Gallagher and the Bulgarian—was watching the fight.

Re-Direct Examination.

Q. Was the Bulgarian fighting Mr. Gallagher when he saw this going on?

A. No, he was hollowing, "No money, no money."

979 Thereupon the government recalled the witness MRS. PAUL, who testified as follows:

Direct Examination.

Q. This is Mrs. Paul?
A. Yes, sir.
Q. You were on the stand last week in this case?
A. Yes, sir.
Q. You testified about an incident of the arrest of a foreigner near your house—in front of your house?
A. Yes, sir.
Q. Did you have any conversation with either one of the men doing the whipping or doing the holding?
A. Yes, sir; I spoke to the man sitting on the buggy.
Q. You did not speak to either one of the men that had hold of the other fellow?
A. No, sir.
Q. Did you speak to the man that had the buggy whip in his hand?
A. No, sir.
Q. Did you tell him that the man that was doing the whipping was serving the other fellow right?
A. No, sir.
Q. How far did these men, the man that got out of the buggy and the other man that had the pistol, how far did they follow the man back that was walking backwards in the way he was going?
A. Three or four yards, around there, away; they went over where they first was.
Q. You say the man the other parties were after?
A. Yes, sir.
Q. Describe his manner and what he was doing?

A. When they first began to whip him he just commenced throwing up his hands and begging and 980 begging and walking backwards from them, and turned as they hit him, and then they sort of stopped a little. I looked towards the man sitting—towards the buggy, and when I did that they commenced whipping him again, and then I turned and looked back at them again, and they hit him, I could not tell you how many licks. It made me feel so bad, and I turned back to the man who was sitting on the buggy, I was standing up and I laid my hands that way on the railing of the banister, and I says what is the trouble, and he told me then this man had stolen some clothes, and they were getting satisfaction; I understood him to say that, and the other man had quit whipping and turned and went back to the buggy, about the time he answered me, and I turned and looked at my daughter, and I saw the man walking ahead of the other one, and I never spoke to but one man; I saw him when he got back on the buggy and went riding on.

Q. Was there much loud talking?

A. Yes, sir.

Q. Swearing?

A. Yes, sir.

Q. Did you see the horse, was the horse frightened

A. Yes, sir. He turned around in the road, and the buggy went nearly to the gate where Mrs. Gibson lives.

Q. You did not slap your hands or hold up your hands, and say "You are serving him right?"

A. No, sir.

Q. Now, this man going backwards turning with his hands up, did you see him seize on to either one of the other parties?

A. No, sir; I didn't see him touch either one of them.

Q. You say one man had a pistol?

A. Yes, sir.

981 Q. Describe to the jury what you saw him do?

A. He was presenting it that way as the man would turn from him, present it about that close to him; I could see it glitter; the sun was shining just right to shine on it.

Q. Did you know or have you heard any discussion among the neighbors after this about the manner in which they treated the men at Lockhart?

A. Yes, sir; I heard a great deal of talk after that; I never heard a word before.

Q. What was that general rumor? How did they say they were treated in that camp?

A. Mighty bad.

Q. Did you hear in this talk any discussion of reputations the name of a man by the name of Gallagher

A. Yes, sir; I have heard of the man.

Q. Did you hear of a man by the name of Irlan?

A. Yes, sir; I heard of him.

Q. Did you hear of a man by the name of race?

A. Yes, sir.

Q. Did you hear of a man by the name of ellinger?

A. I do not remember.

Q. In this discussion about how the men were treated did you hear the names of either one I have mentioned, about how they treated them?

A. I heard them say they were hunting this man but I don't know.

Q. Now, reputation is what you heard people say—talk in the neighborhood, now had you heard since that time discussed around among your neighbors, around Laurel Hill, the reputation of Mr. Gallagher, how the men were treated—

982 Defendants' counsel did then and there object to the reputation in Lockhart, or the understanding of his reputation in any community except where the man lives. But the Court did then and there overrule said objection; to which ruling of the Court defendants' counsel did then and there except.

Q. What was that talk and reputation about Mr. Gallagher and these other gentlemen you have named?

A. That they were hunting them and made them work.

Q. Did you in this general discussion and talk—was anything said about how they treated them after they had got them back?

A. No, sir; not as I remember of.

Q. You are certain there were more than two licks hit with the buggy whip?

A. Yes, sir.

Q. There were several licks?

A. Yes, sir; several licks.

Q. There were two different spells of it was there not?

A. Yes, sir.

Cross Examination.

Q. Which one of these men have you heard people talking about?

A. The one they said was Mr. Gallagher—said that he was hunting the men.

Q. Which other one did you hear them talk about?

A. I never remember the other ones name, but I heard Mr. Gallagher's name very often.

Q. Where did you hear that, around Laurel Hill?

A. Yes, sir; people passing talking about it.

Q. You do not know what his reputation was among people up at Lockhart?

A. No, sir.

Q. Around the logs camps up there?

A. No, sir.

983 Q. Laurel Hill is quite a distance from there?

A. Yes, sir; right good distance.

Q. Did you ever hear of Mr. Harlan?

A. I have heard his name called.

Q. Did you ever hear of his chasing anybody back?

A. No, sir.

Q. Did you ever hear of Mr. Newlander carrying anybody back?

A. No, sir.

Q. Did you ever hear of Mr. Sandor carrying anybody back?

A. No, sir; nothing about anybody except Mr. Gallagher, I heard about him hunting men, that is all.

Q. Can you state whether that is the general reputation around Laurel Hill?

A. It was; I have heard several talking about it.

Q. About how many people live around Laurel Hill?

A. I have heard several—

Q. I am not asking you who you heard talking about it—how many people lived around there?

A. I could not tell you exactly how many.

Q. As many as seven or eight hundred?

A. No, sir.

Q. How many in the village of Laurel Hill, five hundred?

A. No, sir.

Q. Three hundred?

A. May be two or three hundred people there.

Q. How far do you live from Laurel Hill proper?

A. One and a quarter miles.

Q. The people are settled all around are they not, pretty thickly settled?

A. In a quarter, and shorter distance.

Q. Do not tell me what you heard said, but how
984 many—you need not name them now— but how
many of these people have you heard speak of that?

A. I could not tell you that, I do not remember that.

Q. About how many?

A. I cannot tell you about that.

Q. Have you heard as many as twenty?

A. No, sir; I do not know as I have.

Q. Have you heard as many as ten?

A. I could not tell you exactly.

Q. Do you think you have heard that many?

A. I am, I am not; I won't say that, I don't know.

Q. Don't tell me what they said but give me the names of the people you heard talking?

A. I don't know as I can particularly tell you the names right now. I do not remember, but this I know, I heard several talking about it; I do not know exactly now who it was but I know I was talking with several people.

Q. They are all your neighbors and friends?

A. And people passing, Mr. Sweeny, and Mr. Henderson, and several men right around me.

Q. Was that before or since this transaction that occurred near your house that you heard them talking?

A. Since.

Q. You never heard it before?

A. No, sir.

Q. Mrs. Paul, didn't that incident excite you some?

A. Yes, sir; it did.

Q. Were you very much excited?

A. Not so powerful, I was excited right at first, but I thought it would not do to be that way, and so I steadied myself about it.

985 Q. How far did you say these people were from you?

A. About thirty-five yards.

Q. Were they right straight out in front of your door?

A. No, sir; they commenced right like at this direction and went on around in this direction.

Q. Does your house sit east and west, or north and south?

A. East and west.

Q. It has a porch?

A. Yes, sir.

Q. Were these men down this was way or out this way?

A. They were east of my house.

Q. Your house sits east and west?

A. The gallery is on the south side of my house.

Q. Were they directly out east of your house?

A. I was standing about here—(pointing to diagram)—I think, and they ran clean on around the yard, way around here.

Q. Is there a patch in front of your house?

A. No, sir; in the back of the house, and it goes on down around the road.

Q. On the east side?

A. On the west side, on the east side is woodland; the field is on the north side.

Q. Now what marks the line here?

A. The fence runs on down there.
Q. And here is a field over here?
A. Yes, sir.
Q. And here is a field along here?
A. No, sir.
Q. The field come down part of the way?
A. Yes, sir.
986 Q. Is there any field down here?
A. That is on the east side?
Q. Yes?
A. No, sir.
Q. Now these men began below the house, or right in front—
A. Just a little past the corner.
Q. What kind of a growth is there along there?
A. Right out in the corner of the yard there is some little oaks about that high, and then two or three small peach trees in the yard, but they was in open view to me, after they passed around that small place.
Q. They were just a little while out of your sight?
A. Not more than a second hardly.
Q. As soon as they passed out you saw them again?
A. Yes, sir; I was in open view of them.
Q. You could not see over the top of the oaks, but as soon as they passed from behind them you could see them?
A. Yes, sir.
Q. You say this man was going backward and talking and holding up his hands, what was he saying?
A. I could not understand; I know that he was making a terrible fuss, but I could not tell what he was saying, he didn't talk like our people, and I could not understand what he was saying.
Q. You don't know of your own knowledge that he was talking, you got that information from what you saw?
A. He acted like it.

Defendants' counsel did then and there move the Court to strike out the statements of the witness that he was talking, and that he acted like he was talking; but the Court did then and there overrule such objection, to which ruling of the Court defendants did then and [there] except. 987

By the Court:
I must say to the jury that this witness did not hear or

understand a word that that man said on that occasion, it appears, and that so far as her statement goes that he was talking, goes out, so far as anything that he said was concerned; all her statements as to his actions and manner remain in the testimony, but it is evident that she has not said that she understood anything he said, therefore the expression that he was talking, so far as it means any expression from his mouth, is expunged from the testimony, and is not to be considered as testimony.

Re-Direct Examination.

Q. Where does Mr. Sweeny live?

A. Mr. Sweeny and Mr. Anderson live about a mile on the road from where I live.

Q. Towards Laurel Hill or towards Florala?

A. Going to DeFuniak; they live on the DeFuniak road.

Q. Can you recall anybody that you talked with or heard talk about the matter that lived up towards Florala?

A. Mr. Parnley, I have heard him talking.

Q. They would say they had heard so. You know I don't know anything about it.

Re-Cross Examination.

Q. That was on the 19th day of last July?

A. Yes, sir; on the 19th day of last July as well as I remember.

988 Thereupon the government called as a witness in rebuttal one LIZZIE BROOKS, who, having been duly sworn, testified as follows:

Direct Examination.

Q. Have you ever lived at Lockhart?
A. At the Lockhart camps.
Q. At the log camps or the turpentine camps?
A. Log camp.
Q. Do you know Mr. Gallagher?
A. Yes, sir.
Q. Do you know Mr. Bellinger?
A. Yes, sir.
Q. Did you see these gentlemen, Mr. Gallagher and Mr. Archie Bellinger?
A. Yes, sir.
Q. Did you live there or were you there on a visit?
A. I lived there with my mother.
Q. In July?
A. I do not remember.
Q. Was it during the summer time of this year?
A. Yes, sir; along in the summer time.
Q. Did you see any whipping then?
A. Yes, sir.
Q. Tell what you did see and who was present?
A. There was Mr. Gallagher, Archie, and John Flosson and Mr. Ollie.
Q. State what they were doing.
A. They, four of them, were at work, there was a beaten, I never saw them hit but one lick, and then I turned my back.
Q. What position was the man in, did you see how he was fixed?
989 A. He looked to me like he was lying across a stump.
Q. Out in the open air?
A. Yes, sir; near the shop.
Q. You say you heard one lick, did it frighten you?
A. Yes, sir, and I turned and went back to the house.

Cross-Examination.

Q. How long did you live around the camps Mrs. Brooks?
A. I do not know how long I was there, not so very long.
Q. What year was it?

A. I don't know whether it was this year or last, in this year I reckon.

Q. What month?

A. I do not know.

Q. Summer or winter?

A. Yes, sir; it was in the summer.

Q. You do not know whether it was the last past summer or the summer before?

A. It was this last past summer I reckon.

Q. Do you know in what month, June, July, or August?

A. No, sir; I do not know the month.

Q. You saw the lick struck?

A. Yes, sir.

Q. Who struck it?

A. I do not know who it was, I was not close enough to tell.

Q. You knew the parties you were close enough to recognize the parties?

A. No, sir; them four was all I knew.

Q. Was there other people there besides those four?

A. Yes, sir; but I do not know who they were.

Q. How far were you, to the best of your judgment, from them?

990 A. A right smart piece, they was near the shop and I was almost to the commissary.

Q. Was it two or three hundred yards?

A. I do not know..

Q. Do you mean that you were so far away that you could not recognize those people?

A. Yes, sir.

Q. You could not recognize them, how did you recognize Mr. Bellinger, Mr. Gallagher, if it was the distance that prevented you?

A. I knew them before, I could see well enough to tell them four.

Q. There was quite a crowd around there?

A. Yes, sir; right smart around there.

Q. You did not know what the trouble began about?

A. No, sir.

Q. You did not see but one lick?

A. No, sir; that is all.

Q. You were at the commissary were you?

A. I was between the commissary and the cars, but coming across.

Q. The cars were stationary?

A. Yes, sir.

Q. There was nothing you could recall to fix in your mind what month it was?

A. No, sir.

Q. How long since you have lived there?

A. I do not know how long I been lived there, I moved to Svea for a month, and I have been at Laurel Hill, I think I have been there about four months.

Q. You stayed at Svea one month, and you have been at Laurel Hill four months?

A. Yes, sir.

Q. How long before you left there did it happen?

991 A. About three weeks before we left.

Q. Is your name Mrs. Brooks or Miss Brooks?

A. Miss Brooks.

Q. Your mother was a Brooks?

A. No, sir; I married a Brooks, I was a Godwin before I married.

Q. Did you ever live at Falco?

A. Yes, sir.

Re-Direct Examination.

Q. Did you see any one of the parties have anything in his hand at the time you saw the man across the stump?

A. Yes, sir; one with the pistol in his hand.

Q. One of those that you knew?

A. No, sir; it was not either one that I knew.

Q. One that you did not know?

A. Yes, sir.

Re-Cross Examination.

Q. Did you know the man that had the pistol in his hand?

A. No, sir.

Thereupon the government called as a witness in rebuttal one S. G. FRENCH, who, having been duly sworn, testified as follows:

By Defendants' Counsel:

992 Have you been in the courtroom at any time when anybody testified in this case?

A. A little while yesterday morning or the day before.

Q. And you heard a part of the testimony?

A. Yes, sir.

Q. Have you been in since that time?

A. No, sir.

Q. How long were you in—were you in here during the cross examination of any witness?

A. I was in here until Mr. Flournoy told me that the rule would be enforced; I think it was in the forenoon; I do not think it was in the afternoon.

Q. Who was testifying when you were in here yesterday in the forenoon?

A. I heard all of Mr. Gallagher's testimony.

Q. The day before who did you hear testify?

A. I do not know that I was in here the day before; it was only one day that I was in here.

Q. You heard none of the other witnesses except Mr. Gallagher.

A. Yes, sir; I did.

Q. Who?

A. Let me see, I think it was a witness called Big Harry?

Q. Did you hear Lemater?

A. No, sir.

Q. Did you hear any other witness besides these two?

A. Yes, sir; I remember one other.

Q. Who was that?

A. Archie Bellinger.

Q. Archie Bellinger, Big Harry and Mr. Gallagher; did you hear any part of any other witnesses' testimony?

A. Not that I remember, I think those were the only three that testified during the time I was in the courtroom.

993 Defendants' counsel object to the witness testifying to any fact to which the three witnesses, whose testimony he heard, testified.

Direct Examination.

Q. Where do you live?
A. Laurel Hill.
Q. Are you a son of General French?
A. Yes, sir.
Q. How long have you lived at Laurel Hill?
A. Six years.
Q. What is your business up there?
A. Civil engineer.
Q. Were you there in July and since July of this year?
A. Yes, sir.
Q. Are you acquainted with the general reputation of Mr. Gallagher and Mr. Bellinger, the—
A. I cannot say that I am.
Q. Have you heard any discussion around Laurel Hill and above there, and in the community generally as to these parties, their treatment—whether they were good to the men at the Lockhart camps of the Jackson Lumber Company?

By Defendants' Counsel:
I would like to test him further; is that a general rumor that your are talking about?

A. I have not heard the question that I am supposed to answer yet.
Q. He asked you if you had heard the rumor generally?
A. I have heard it openly discussed; yes, sir; it has been discussed by people living in Laurel Hill, and in that community.

994 By Government's Counsel:
Q. How far is Laurel Hill from Florala?
A. Ten miles.
Q. Do the people intermingle pretty generally and frequently between those two points?
A. There is more or less traveling between the two places all the time.
Q. Have you been to Florala since last July one or more times?
A. Yes, sir; several times.
Q. Now, what is that general rumor and talk around Florala and the adjoining community as to these parties, the treatment that these men have given their laborers in the camp?

But defendants' counsel did then and there renew their objection, and also upon the further ground that he has not shown that he knew what it was around Florala. But the Court did then and there overrule such objection, to which ruling of the Court defendants did then and there except.

A. The general rumor is that I have never heard anything of ill treatment at the camps except in this particlar case, when the men are carried back there; the rumor is that the men are well treated at the camp; this is I think the only hard rumor in reference to this particular case.

Q. What do you mean by particular case?

A. At the time these men were carried back in July or June.

Q. The reputation was generally that they were treated pretty badly?

A. The general rumor was that they had been whipped?

Q. Was that rumor also—did you learn from that general reputation or rumor what they were carried back for? 995

A. Nothing except hearsay, that they had been carried back for attempting to get away without paying their transportation.

Cross Examination.

Q. Now, that general rumor in the community was after the whipping of this particular man was it not?

A. I heard some of the names of the men, I could not designate any particular man.

Q. There was no comment until this transaction of the 19th of July?

A. I have never heard of any; no, sir.

Q. All that you had ever heard was that the men was well treated up to that time?

A. That was the general impression that the men were being well treated all over the camps?

Re-Direct Examination.

Q. It was only the foreigners or Hungarians you understood to have been carried back, that is the rumor?

A. That they were foreigners.

Re-Cross Examination.

Q. What you have had to say you heard at Florala?

A. I heard from the discussion at Florala, mostly what I have heard was at Laurel Hill; I did not spend much time in Florala.

996 Thereupon the government called as a witness one ALBERT DANISH, who, having been duly sworn, testified as follows:

Direct Examination.

Q. What is your name?

A. Albert Danish.

Q. Have you been working for the Jackson Lumber Company during this year?

A. Yes, sir.

Q. When did you begin working for them?

(Interpreter Friedman was here called.)

A. He left New York June 21st for Lockhart.

Q. He got to Lockhart when?

A. He got there on the 24th of June on Sunday, 12 o'clock at night.

Q. Where did you work at Lockhart?

A. He worked on the railroad.

Q. Do you know Mr. Gallagher.

A. Yes, sir.

Q. Do you know Mr. Bellinger?

A. No, sir.

Q. Do you know Mr. Lemater?

A. No, sir.

Q. Do you know Mr. Sandor?

A. Yes, sir.

Q. Do you know Mr. Newlander?

A. He only knew him while Newlander was here; he did not know him at the camp; he did not know him there at the camps; he has not seen Newlander at work at all until he met him the day he left camp.

997 Q. Were you at the log camp or the turpentine camp?

A. Log camp.

Q. Do you know the Bulgarian, Manuel Jordsman?

A. Yes, sir; they came together.

Q. Were you there the day the difficulty occurred between Gallagher and the Bulgarian?

A. Yes, sir.

Q. What were you doing at the time?

A. He was going in the car to get his dinner at the time Mr. Gallagher was taking this man in; he was thought at first they were just joking.

Q. Did you see the difficulty?

A. Yes, sir.

Q. Describe and tell us what occurred between Mr. Gallagher and the Bulgarian at the time?

A. He says he was looking for the Bulgarian; the dinner bell was ringing, and he was looking for him to call him into dinner, and at the same time the Bulgarian came up and Mr. Gallagher took hold of him and pulled him into the office, and he thought they were just simply joking; Mr. Gallagher says "Go on, I will fix you," and then he commenced beating him and kicked him, and this fellow was sitting at the end of the table, and there was some screen doors, and he saw the whole performance; he says he kicked him all over, and when he got up he could hardly walk; they was out there picking black berries.

Q. Show us here where you were; where was Gallagher when you first saw him?

A. Mr. Gallagher took hold of him on the spot, and at the same time was bringing him up, and put him in there; he was out here and Mr. Gallagher and the Bulgarian was out here, and the Bulgarian he got here. (Referring to diagram.) Mr. Gallagher took hold of him and made him walk right
998 in here; well this fellow was coming in here and sat down; there is no separate space; the whole thing is one, step leads up to the car, and this fellow sat down right here to eat his dinner; and as he heard the beating he come right over here, and stood against this door, on the right hand side, and saw the whole thing; here he indicated where Mr. Gallagher knocked the Bulgarian down, and here where the little writing desk is with pigeon holes in it.

Q. He saw the beating then in this office?

A. He has seen it right there to the right?

Q. Did I understand him to say that Gallagher kicked him as well as beat him?

A. Yes, sir; he kicked him, Gallagher was awful mad and he kicked him. He says Mr. Gallagher was in a very bad humor since the people left the cars at Fort Valley; and he was in an awful bad humor, and he kicked him and beat him with his hand.

Q. Ask him if the Bulgarian struck him, Mr. Gallagher, or did anything to Mr. Gallagher?

A. He was looking at what he was trying to do with him, the Bulgarian did not raise his hand, did not try to fight; he was scared and besides that was getting him in the office, and knocked him down right then and there.

Q. Does he understand English?

A. He says he understands very little, very few words; he understood, "I will fix you," he understood that; but he said it was said in a joking way.

Q. Did he understand that English at that time?

A. I asked him and he said yes; he says he has been in this country about four years, but cannot talk.

Q. Did the Bulgarian say anything at that time?

A. He says he was only hollowing, "No money, no money."

999 Q. Ask him if he slept in that string of cars there, or where his sleeping quarters were?

A. He slept in the car that the Bulgarian slept in.

Q. Did he sleep in those cars and stay there during July?

A. He stayed there all the time from the beginning to the end. He slept in the same car.

Q. Ask him if he saw any guards around those cars while he was there, and if he did see them, where?

Q. [A.] At the beginning they did not have any, but after while at night he went around looking with a lantern, but he does not see the man.

Q. Was that man armed?

A. Yes, sir.

Q. Did he see Big Harry around there; does he know Big Harry?

A. He knows him; he didn't know his name at the time, but he saw him when he went around with his gun.

Q. What kind of a gun did he have?

A. A regular shot gun, he says he took it right there on his shoulder and walked up and down.

Q. Now, he said while ago, that he knew Mr. Newlander, I want to know when he first saw him, Mr. Newlander?

A. He first knew him right here. He did not know him from anybody else, but he has seen him at the camp, but didn't know who it was.

Q. Ask him if it was during the preliminary examination before Mr. Marsh, at that time, that he met Mr. Newlander.

A. Yes, sir; that was the first time?

Q. Ask him if Mr. Newlander tried to get him to go to New York and not be a witness here?

But defendants' counsel did then and there object to the said question upon the ground that it is not in rebuttal of anything that has heretofore been brought out; but the
1000 said judge did then and there overrule the said objection; to which ruling of the Court defendants did then and there except.

A. Mr. Newlander told him that he better get away a considerable distance from here, because they put him in the penitentiary here, to which he replied, all the same to me now if he gets in the penitentiary or not, that he is in it.

Q. In what, what did he mean by that?

A. He meant that he is in Court now; Mr. Newlander asked him what he wanted up here, what he was doing up here, what he wanted here, he says you better get away from here, you are liable to get three or four years.

Q. Where did that conversation take place, in this building or on the street or where?

A. It taken place right here in the hall.

Q. Now, can he fis [fix] the time, does he remember about the time, what month or what day, as near as he can, was it during the examination before Mr. Marsh?

A. He is not positive, but he don't remember; it was about in August or July.

Q. Was that during the time of the examination by Mr. Marsh?

A. Yes, sir.

Q. Was Mr. Gallagher here.

A. Yes, sir.

Defendants' counsel did then and there move to strike out the statement of the witness with respect to the conduct and acts of Mr. Newlander, upon the ground that it is an act done by the alleged conspirator subsequent to the time of the alleged conspiracy, and that it was not the acts which are charged in the indictment first alleged to have been done; and that the consiparcy had ceased, if any ever existed. But the Court did then and there deny said motion; to which
1001 ruling of the Court defendants did then and there except.

Q. Was Mr. Grace and Mr. Sandor here at that time?
A. He don't remember exactly. he remembers seeing Mr. Harlan and Sandor; he knows Mr. Grace, but don't know anything about him; don't remember first trial or not.

Cross-Examination.

Q. What nationality are you?
A. He is a Hungarian, Roman Catholic.
Q. How long have you been in America.
A. Fourth year.
Q. How many languages do you speak?
A. He speaks Hungarian a little, German and Slav language.
Q. Are you one of the parties who left the car at Fort Valley, Georgia?
Q. He remained, he slept right there.
Q. You stayed there during the time?
A. Yes, sir; he did not run away.
Q. Was the Bulgarian with you at Fort Valley Georgia?
A. Right along with him.
Q. Do you and the Bulgarian speak the same language?
A. He understands a little, can speak to him a little, not very much, it resembles the Slav language a little.
Q. Were you and the Bulgarian associates?
A. No, not him, that was his uncle.
Q. Was your uncle down at Lockhart at the log camps?
A. Yes, sir.
Q. What is the name of your uncle?
A. Coleman Danish.
Q. Was not Coleman Danish your brother?

1002 But Government's counsel did then and there object to the said question, which objection was then and there sustained by the Court; and defendants' counsel did then and there except to the ruling of the Court.

Q. You say that you and the Bulgarian had been picking berries?
A. He said the Bulgarian had been picking berries.
Q. How do you know that the Bulgarian was picking berries?
A. He was not with him, but the Bulgarian motioned to him that he was out there picking berries.

Q. When was that that he was out there picking blackberries?

A. It was the second day after they arrived there on Sunday; Gallagher told them they need not work on Monday; need not to work, and that was on Monday morning when he went out picking berries, this Bulgarian.

Q. Did anybody go with him to pick berries?

A. He don't know, he has not seen anybody.

Q. You were on the ground when you saw Mr. Gallagher take hold of the Bulgarian?

A. He was going right to get in the car to his dinner, and he went to his dinner car and the Bulgarian and Mr. Gallagher went the other way.

Q. How long had the Bulgarian been back from picking blackberries?

A. He don't know, he only knew the dinner bell was ringing.

Q. What I want to know is, ask him if the Bulgarian had been around there some little time before the bell rang?

A. They was looking for him, for the Bulgarian, he and another man was looking for the Bulgarian around the car, and finally they saw him, and Mr. Gallagher had hold of him, that is the time he seen the Bulgarian when Mr. Gallagher had hold of him, taking him into the car.

1003 Q. What was there about the manner of Mr. Gallagher that made you think he was joking, what was there in his manner that made you think he was joking?

A. He says, just from the remark that Mr. Gallagher made, "I am going to fix you," he thought he meant it in a joking way.

Q. Had he been fixing others there before that that you know of yourself?

A. They just arrived there, he don't know anything about that.

Q. Were you furnished with checks by Mr. Gallagher?

A. Mr. Gallagher has not given him any checks, but afterwards some one give him some checks, but they did not come from Mr. Gallagher.

Q. Did you see Mr. Gallagher give anybody checks from the desk?

A. He has not.

Q. Were you working on the railroad at the log camps during the month of July and August last?

A. He started to work on the 26th of June on the railroad, at the log camp, and worked there twenty-five days, right along; he did not work anywhere else.

Q. And after that where did he work?

A. After awhile he thought he had worked enough out there for what he owed and he left. Just when did he leave there?

A. He don't remember, he always kept track of the days he worked he worked twenty-five days, and thought that would be about equivalent to his debts, and then he left; he don't remember exactly the date.

Q. Do you remember whether it was in the month of August or in the month of July?

A. He says it was about the twenty-fifth of July when he left.

Q. Do you know whether Mr. Lesser had been out there before you left or not?

1004

But to the asking of such question the Government's counsel did then and there object, which objection was then and there sustained; and defendants' counsel did then and there except to the ruling of the Court.

Q. Were you eating dinner at the time the Bulgarian came?

A. He just was sitting down and wanted to eat dinner, but he didn't eat, he got scared, and didn't eat at all.

Q. You testified before Mr. Marsh, the commissioner, didn't you?

A. Yes, sir.

Q. Didn't you state on that examination that you did not understand what Mr. Gallagher said?

A. Yes, sir; he didn't understand what Mr. Gallagher told the Bulgarian at the time.

Q. Didn't you state on that examination you did not understand anything that Mr. Gallagher said?

A. He didn't, he said he didn't notice anything. He just simply seen the fight, that is all.

Q. What do you mean, now, by stating you heard Mr. Gallagher say, "I will fix you?"

A. He says they did not ask him at the time of the first trial about that at all; they did not ask him, he is just saying that on his own accord.

Q. Were you not asked this question: "Could you understand what was being said at the time by the man who was doing the beating?"

A. He don't remember whether it was asked or not?

Q. Didn't you state on that examination that you were eating your dinner at the time the difficulty began?

A. He says he don't remember saying that, but he thinks his testimony was he was sitting down to about eat
1005 his dinner, and he left just as soon as they commenced to fight him; he left and was watching the fight.

Q. How wide is the door to that dining room?

A. About the width of this table he don't know for sure.

Q. When the difficulty began did you go and stand in the door?

A. He stood right at the door, and watched them right at the door.

Q. Ask him if he means by that that he was standing in the door between the facing?

A. From the outside, he could not get into the office; he was watching it from the dining car.

Q. Were you on the platform between the two cars, the office and the dining room?

A. He says he was standing on a little platform on the inside platform, near the door, and watched the whole proceeding, and as the man was coming out he ran down and left.

Q. You were leaning against the door of the office, and not against the door of the dining room?

A. The office door; yes, sir.

Q. Were there any other people about that door besides yourself?

A. He did not notice any; there was plenty of people around there, but he did not notice anybody particularly; he didn't pay any attention.

Q. Do you know whether there was anybody on the platform with you or about you?

A. He don't remember.

Q. Was there anybody in the office with the Bulgarian and Mr Gallagher?

A. He says there was some one in there, it was the first day and he don't know who was in there, but there
1006 was somebody in there, in the office with Mr. Gallagher.

Q. Was that one of the men that came down with you?

A. No, there was a man that belongs to Lockhart; a man in the office; the company's man.

Q. Do you know whether it was the bookeeper or a foreman or anything of that kind?

A. He don't know, it was the first day and he didn't know who it was; it was some gentleman; it was no workman, it was somebody that belongs to the company.

Q. Was he an American or a foreigner?

A. An American.

Q. Was he in the car during the entire difficulty?

A. Yes, sir.

Q. Were you speaking with reference to the dining room door or the office door when you described the width?

A. That was the width.

Q. What is the width of the dining room door?

A. The same width as the office door.

Q. Didn't you state on your examination before the Court Commissioner, Mr. Marsh, that you were scared so that you jumped up from the table and left your dinner, and all that you saw was when the man came out of the office crying?

A. He says he has stated that, too but he says he has seen the whipping also.

Q. Why did you state to the Court Commissioner when asked that you were scared and ran out, and that was all you did see?

A. He says he has not stated that; he has stated that he has seen the whipping as well as the crying.

Q. How long have you known Big Harry?

A. He has seen him there as a blacksmith in the blacksmith shop.

1007 Q. Did you know him when you were testifying down here before the commissioner?

A. He knew him at the time when they had the trial here before the commissioner.

Q. Had he known him before that time?

A. Yes, sir; he knew him at the camp.

Q. Didn't you state before the commissioner that you did not know him?

A. He says that he did, he stated that he did not know Big Harry by the name; he knows him by sight, but he don't know his name; he knows him when he looks at him, but he don't know his name.

Q. Is he in the court room?

A. Yes, sir; he is.

Q. Where is he?

(Witness points to the tall fellow sitting by the table.)

Re-Direct Examination.

Q. Ask him if he said this when he was before the commissioner? "Who did you see beaten?" "That Bulgarian who was sitting out there, that fellow Jordsman was the one I saw beat." Ask him if he testified to that?

A. Yes, sir

1008

Thereupon the Government recalled the witness, TRUDICH MIHALY. who testified as follows:

Louis Friedman, Interpreter.

Direct Examination.

Q. When you met Dr. Grace and Mr. Gallagher and Mr. Sandor in the buggy in the road, when Dr. Grace took hold of you did you make any fight or attempt to hit him?

A. No, sir; he did not .

Q. Did you put your hands on Dr. Grace, if not, what did you do with your hands when he took hold of you?

A. He didn't, he simply pulled his coat over his ears so the whip didn't strike his ears, so that it could not disfigure his face.

Q. Now, on the way back to Lockhart did he tell Sandor to tell this man that he would prefer going to Lockhart and work, rather than go to jail?

A. He says he did not; there was nothing said about that at all.

Q. Was any attempt made by Dr. Grace or Mr. Gallagher to see what clothes he had on or search him when they met him in the road?

A. No, sir; they did not.

Q. Now, what time did they reach the commissary or the office at Lockhart that evening?

A. It was about six o'clock or after, because the laborers were already quitting work at the mill.

Q. Now, ask him if the licks or the lick that he got there were mere taps or were they hard?

A. They was pretty hard licks, he says, and Dr. Grace took hold of him, as he indicated, and threw him back in the buggy, as he did not care to go out to work in the woods; he says he wished to work in the saw mill, and didn't care to go
1009 out in the woods.

Q. Ask him who went back with him that evening to the camps besides Dr. Grace?

A. There was another man he says going along sitting near

Dr. Grace, he knew the man, but didn't know his name at the time.

Q. Ask him if he has learned that name since, and, if he now knows?

A. He learned his name since, is Benderstock.

Q. Ask him if anything was said to him by Benderstock on the way to the camp or by Dr. Grace about anybody accusing him of stealing anything from Benderstock?

A. They have not said anything at all to him during the journey?

Q. Ask him if he had any conversation with Benderstock the next day, in which he said he had taken anything that belonged to Benderstock?

A. He says there was nothing said about stealing; Benderstock simply asked him if a certain man by the name of Coleyjohn has give him back his clothes; has brought his clothes and has given him.

Q. This man's clothes?

A. Yes, sir; Benderstock asked him if this Coleyjohn has give this man his own clothes—When he came out from New York, he [had] an overcoat and shoes and several things, and he says he seen where Gallagher has turned over his clothes to this man Colejohn, and he wanted to know if Coleyjohn has given his clothes back to him.

Q. Were you told by Benderstock or by Gallagher or anybody else then or after then, that you had stolen anything from Benderstock?

A. There was not a word said about that from any one.

Q. Do you know Newlander?

1010 A. Yes, sir.

Q. Who brought you down from Lockhart to Court in August down here?

A. Mr. Newlander.

Q. What did Mr. Newlander say to you about going to New York?

But counsel for defendants did then and there object to the said question upon the ground that it is after the object of the said conspiracy ended, and upon the further ground that it is not in cross of anything that has been brought by the defense.

But the Court did then and there overrule such objection; to which ruling of the Court, defendants did then and there except.

Q. What was said by Mr. Newlander about going away from here?

A. He says Mr. Newlander made him a proposition that both of them should go back, should run away to New York, and at that time he says he was intimating something about stealing, but up to that time he had never heard anything about it.

Cross-Examination.

Q. That is the only conversation that you had with Benderstock after you got back, the one you have just related?

A. He says no, he went to Benderstock quite often; went there almost every day.

Q. Did you have any conversation with him about the clothes other than the one you have just testified to?

A. They had a conversation about his own clothes, but nothing about the stolen clothes whatever.

1011 Q. The first time you knew Benderstock was the time he got in the buggy with you at Lockhart, going to the log camps?

A. No, they got acquainted on board the ship.

Q. Did Sandor say anything at all to you after you got in the buggy, before you got back to Lockhart?

A. He says he tried to speak to Sandors, but he cursed him out, and he didn't say any more to him about it.

Q. What did Sandor say to you—just state what he said to you?

A. He says he cursed him out, and told him nothing but trouble to him, and he says he told him he got to work in the woods until he works down what he owes to the company, his expense money, and then he can come down and work in the saw mill.

Q. Where were you when he told you that, at Lockhart?

A. That was as they was going to Lockhart.

Q. That was before you reached either one of those little villages?

A. That was before they reached the village.

Re-Direct Examination.

Q. When you first got in the buggy soon after the whipping, did Mr. Sandor say anything to you there?

A. He says he told him not to move in that buggy, because, if he does they will shoot him.

Q. Ask him if anything was said to him by Sandor about what might have been done if he had not been present?

A. He says he did, he told him when he was crying, he told him if he would not have been present, they would have shot him.

1012 Thereupon the government called as a witness in rebuttal, one JOHN W. SWILLEY, who having been duly sworn, testifies as follows:

Direct Examination.

Q. Where do you live?
A. Florida.
Q. Did you live there last July?
A. Yes, sir.
Q. What is your business there?
A. I am not doing anything at the present time.
Q. Do you know Mr. Gallagher.
A. When I see him; yes, sir.
Q. Do you know him here?
A. Yes, sir; I think I see him.
Q. Do you know Dr. Grace?
A. Yes, sir.
Q. Do you know this man sitting here, did you ever see him before?
A. Yes, sir; I think I have, I could not swear to it, I do not remember his name, but I have seen him before.
Q. Where did you see him before?
A. In Florida.
Q. Was Grace or Gallagher with him at the time?
A. Yes, sir.
Q. State to the Court and jury what you saw, and what attracted your attention to these gentlemen at the time?
A. Well, I was standing on the streets, and I saw them driving into Florala in a buggy with a man sitting in the back of the buggy.
Q. Describe the position of the man?
A. The man was sitting in the back of the buggy in about this position.
Q. Leaning over?
1013 A. Yes, sir.
Q. What did they do, did they stop?
A. Yes, sir; they stopped, two got out and went into the bar room, and in a few minutes they came out.
Q. What became of the other one?

A. He got out and went in after they came out.

Q. Where did the man remain, the stranger?

A. In the back of the buggy.

Q. Did you hear any conversation between those parties and anybody else in your presence at that time?

A. No, sir; not to amount to anything; I did hear them remark that they caught him and whipped him and was going to carry him back and put him to work.

Q. You have been living in Florala for some time?

A. Yes, sir; I moved to Florala in March?

A. Last March?

A. Yes, sir.

A. About July did you hear—do you know the general reputation about Florala of Gallagher and these parties the bosses up there at the Jackson Lumber Company's camps, as to how they were treating the men they were carrying back?

A. No, sir; I didn't hear much about it.

Q. You didn't hear any general rumor as to what was done with the fellows when they got them back there?

A. No, sir.

Q. What was the language as well as you remember that was said of Gallagher or any of the three men as to this fellow; what did they call him?

A. I could not say positively about that.

Q. What is your best recollection?

1014 A. Well, the only thing I remember was they said they caught him with a dog and whipped him, and they were going to carry him back and put him to work.

Cross-Examination.

Q. That was in Florala?

A. Yes, sir.

Q. Mr. Swilley, did you know any of the parties before that?

A. I never met neither one of the gentlemen.

Q. You had them pointed out to you?

A. I had seen them and had heard their names called, but I was not acquainted with them personally.

Q. You had seen them before that?

A. I reckon I had; I had been around there since March, and I suppose I had; I was not acquainted with them at the time; no, sir.

Q. You did not know their names at the time?

A. No, sir.

Q. Which one of the men do you recognize now—if you saw them here, would you recognize them as being the same men?

A. Yes, sir.

Q. Which one of the men was doing the talking?

A. I did not pay enough attention to it to tell definitely, but I think it was Mr. Gallagher that made the remark.

Q. Who was he talking to?

A. I do not remember that—there was a crowd of men standing out there.

Q. Do you remember any of the names of the men standing around there?

1015 A. No, sir; I don't believe I do; I did not pay any attention to the party that they were talking to either.

Q. You paid no attention at all?

A. Nothing, only the man sitting behind, that is what attracted my attention, and then I heard him remark that.

Q. There did not but one man remark that?

A. No, sir: only one that I heard.

Q. At that time had somebody gone into the bar room?

A. No, sir; it was just as they got out of the buggy and started in the bar room.

Q. How far had they gotten from the buggy?

A. I do not suppose over five or six feet.

Q. When somebody approached them?

A. There was several men sitting around there that was talking to them.

Q. Didn't you think that it might be of considerable importance in this case to know that somebody, to know who was up there?

A. No, sir; I didn't think anything about it.

Q. I mean when you were summoned here as a witness?

A. I didn't think I had to hunt up evidence, I would only tell what I knew.

Q. It did not occur to you that it was important; didn't you think that it might be important to corroborate your statement?

A. I did not think anything about it?

Q. They said they had caught him with a dog and whipped him and brought him back?

A. Yes, sir.

Q. How long did you remain in that crowd?

A. A very few minutes, I went down there after painting, I was painting my own house, and I had just come out of my hardware store, otherwise I would not have seen it.

Q. About what time of day was that?

1016 A. I do not remember just exactly.

A. [Q.] It was in the evening, was it not?

A. I do not even remember that.

Q. Do you know what day of the week it was?

A. No, sir.

Q. Do you know what month it was?

A. It was sometime in July; I only know that by painting my house.

Q. Were they near the bar room at that time?

A. Not right at it, but close, they were out in front, nearby.

Q. Whose bar room was it?

A. Mr. Sheppards.

Q. Do you notice Mr. Sheppard about there.

A. No, sir.

Q. Do you remember how Mr. Sheppard was dressed on that occasion?

A. No, sir.

Q. Do you remember how the man was dressed in the back part of the buggy?

A. No, sir.

Q. Do you remember noticing the dogs?

A. Yes, sir.

Re-Direct Examination.

Q. Do you remember seeing him about there?

A. I think I did, I believe now, I believe I remember seeing him; I do not remember talking with him.

Q. You think he was about the bar room about that time?

A. I think he was or near about.

1017

Re-Cross Examination.

Q. You think if somebody else pointed out to you, you could recognize them there?

A. I don't know as I would, I didn't think about it enough to pay any attention out there.

Q. The fact that two or three men had gone down there and caught a man and whipped him didn't attract your attention at all?

A. No, sir.

Q. [A.] No, sir; because I didn't have anything to do with it.

Q. You have something now to do with it, who did you first communicate this to?

A. I think Mr. Reed, along in the summer, it was a man who came to Florala.

Q. From Pensacola?

A. I think so.

Q. Was it Mr. Reese?

A. I could not tell you, I would not say who his name was, but he came to my house.

Q. You would know him if you would see him? What was his business?

A. He was a government man, I suppose; he said he was.

Q. Mr. Reed, did he tell you what kind of work he was doing with the government?

A. He, the way he addressed me, I refused to say anything; I told him I did not know anything about it. I did not want to know anything about it.

Q. Did he tell you what kind of government position he held?

A. I don't know that he did, I do not remember what kind of position he said he held.

Q. Did he tell you how he had learned—now he is the first man you ever told you heard that?

1018 A. Yes, sir.

Q. Did he tell you how he knew you had heard that?

A. He said he heard I was standing on the streets that day.

Q. He had been unable to find any of the other men that had heard you say that?

A. I never asked whether he heard that or not.

Q. He did not advise you what kind of official position he held, was he a detective?

A. I could not tell you.

Q. He did not say so?

A. If he did, I don't remember.

Q. Did you ever see him before?

A. No, sir.

Q. Have you ever seen him since?

A. I think I have seen him since I have been down here.

Q. Have you see [seen] him since you have been here?

A. I think I have.

Q. Have you noticed him out there to-day?

A. I think that is the man sitting over there now.

Q. Which man?

A. That is the man. (Pointing to R. P. Wharton).
Q. He went to your house?
A. Yes, sir.

Re-Direct Examination.

Q. You say you talked very reluctantly?

But defendant's counsel did then and there object to the said question, which objection was then and there overruled, and defendant's counsel did then and there except to the ruling of the Court. 1019

Q. You say the man who came to you told you that he knew you were there?
A. Yes, sir.
Q. At that time did you want to make a statement?
A. I asked him—I told him that I did not care to have anything to do with it.
Q. Do you know whether or not he wrote out anything that you had to say?
A. I think he did.

Defendant's counsel did then and there move the Court to strike out the statement of the witness, upon the ground that it was hearsay, is not shown to have been made in the presence of any of the parties defendant, because subsequent to the transaction and immaterial and irrelevant.

But the Court did then and there overrule said motion, to which ruling of the Court, defendants did then and there except.

Q. You signed the written statement?
A. I think so, I am satisfied I did.
Q. See if that is your signature?
A. Yes, sir; I signed that.
Q. Now, look at the name below that and see if you can make that out?
A. Yes, sir; he wrote that.
Q. Can you read that?
A. Yes, sir.
Q. What is that name?
A. E. P. McCorron.

Q. Can you refresh your memory as to who that man was that went to see you? 1020

A. I think it was; yes, sir.

Q. You are not certain of this gentleman over here, are you?

A. Yes, sir; I am pretty certain that is the man.

Q. Was the man that saw you, was he a lame man, did he limp?

A. Yes, sir; he seemed to limp in one foot?

Q. Did he carry a stick?

A. Yes, sir; he had a stick when he came to my house.

Q. Have you ever seen him since?

A. Yes, sir; down here.

Re-Cross Examination.

Q. You have no trouble in recognizing that as the man?

A. No, sir; I do not see why I should have the trouble.

Q. You are positive that Mr. Wharton is the man?

A. Yes, sir.

Thereupon the government recalled the witness, J. W. RAFFORD, who testified as follows:

Direct Examination.

Q. You testified in this case I believe the other day?

A. Yes, sir.

Q. Were you living and working at Lockhart during the month of July?

A. Yes, sir.

1021 Q. I want to ask you if you know Mr. Gallagher?

A. Yes, sir.

Q. Do you know Dr. Grace?

A. Yes, sir.

Q. Do you know Mr. Harlan?

A. Yes, sir.

Q. Do you know Mr. Sandor?

A. I know him by sight.

Q. Do you know Big Harry?

A. Yes, sir.

Q. Do you know Archie Bellinger?

A. Yes, sir; I know him well.

Q. Do you know what the general reputation of the Jackson Lumber Company's treatment by its employes of its men was during July?

A. Only from hearsay.

Q. I refer to the foreman, the bosses, and Mr. Harlan and Gallagher and Grace, and the others who I have mentioned.

A. Nothing, except that in talking with Dr. Grace—

Q. I am asking about the treatment by the Jackson Lumber Company of its men?

But defendant's counsel did then and there object to the said question, on the ground that it should be confined to the general reputation of the defendants or some of them; but the Court did then and there overrule said objection; to which ruling of the Court, defendants did then and there except.

Q. You say you heard the reputation of how the employes were treated?

A. Yes, sir; during the month of July?

Q. After the time they were bringing these for-
1022 eigners down there, what was that reputation, good
or bad?

A. It was kind of bad, I should think, I would call it bad.

Q. Their manner of treating—

A. Bad, abusing and whipping.

Q. Was that talk among the men?

A. Around the store and where I was working.

Q. Are you familiar with the location of the hotel there that is across the street from the office?

A. Yes, sir.

Q. Can you give us a diagram of the location of the office and commissary, of how they stand?

A. Yes, sir.

Q. How far is it from the office here to the hotel?

A. I should think it was between one hundred and twenty-five and one hundred and thirty feet, as near as I can guess at it.

Q. Is there an open view across the street from the office to the hotel?

A. Yes, sir; can plainly see from the gallery of the hotel to the office.

Cross-Examination.

Q. Do you know anything of the size of these blocks in Lockhart?

A. No, sir; I have never measured them, I have never heard the measurement.

Q. Do you know how many lots there to the block?

A. No, sir.

Q. Is not the hotel in one corner of the block and the commissary in the other corner of the same block?

A. Yes, sir.

1023 Q. Does the hotel stand back a little from the street?

A. Yes, sir; very little.

Q. The post-office and the meat market and the commissary are flush with the street, are they not?

A. The sidewalk in between that and the street.

Q. The sidewalk is out in the street?

A. The same as in front of the building.

Q. The body of the building is flush with the street and the sidewalk is out in the street?

A. No, sir; out at the edge of the street.

Q. The sidewalk is out in a portion of the street?

A. Yes, sir.

Q. The body of the building is flush with the street?

A. Yes, sir.

Q. You have no idea of the lots; now, the office building is in a corner of the block?

A. Yes, sir.

Q. How far is offices, I mean the general office building from the street?

A. Ten or twelve feet, may be fifteen feet from the edge of the sidewalk.

Q. It is in the ocrner of one black?

A. Yes, sir.

Q. And the hotel in the upper corner of the other block?

A. Yes, sir.

Q. And the hotel is in the upper corner of one block, and the post-office and commissary is in the other side of the same block?

A. Standing in between the commissary and the hotel.

Q. I mean the commissary is at one end of the block and the hotel at the other end of the block?

A. Yes, sir.

1024 Q. Some of the blocks are built up—do you know how many houses are built in a block fronting along the street—some are built up undoubtedly?

A. There are five or six houses fronting that block.

Q. How far are the houses apart?

A. Just about—generally houses sets in the middle of the lot.

Q. If the house sits in the middle of the lot, about how far are they apart?

A. May be twenty feet.

Q. Twenty feet apart?

A. Yes, sir.

Q. Do you have any idea of the width of the streets?

A. No, sir.

Q. About one hundred feet, are they that?

A. No, I do not think they are one hundred feet wide, I do not think they are over thirty feet.

Q. You do not think they are over thirty feet?

A. Not over thirty feet or forty feet.

Q. When did you hear this talk that Mihaly was brought back?

A. I do not know Mihaly.

Q. I mean the man you saw Dr. Grace with, was he talking about that that you heard?

A. About that and before that.

Q. You talked a good deal up there yourself, didn't you?

A. Yes, sir; about that, I talked considerable about that.

1025 Thereupon the government recalled the witness, J. W. SWILLEY, who testified as follows:

Direct Examination.

Q. Have you met the gentlemen that you picked out as the man who took your statement up there?

A. Yes, sir.

Q. Have you discovered any difference between that man and the other.

A. I discovered it in his talk.

Q. There is a difference in his voice?

A. Yes, sir.

Q. Looks very much like the other man?

A. Yes, sir; he did to me.

Q. You are satisfied as to whether he is the man who went to see you?

A. I know he ain't now, since I talked to him.

Q. The only way you knew that, is by talking to him?

A. By his voice.

Q. Have you been talking with him in the hall?

A. Yes, sir.

Q. You said a few words to him in the hall about the matter you have just been testifying about?

A. I said nothing only about I being mistaken.

Q. You told him you were mistaken, how came you to tell him that?

Q. [A.] There was something said about it, and I got to talking to him.

Q. Did not you have instructions to tell nobody what you have testified in this Court room?

A. I did not tell him what I testified to.

1026 Q. Were you not instructed not to discuss it with anybody, except the lawyers engaged in the case?

A. No, sir.

Q. You had that instruction, didn't you?

A. I don't remember any such instruction; no, sir.

Q. Have you been talking to anybody else in regard to this case?

A. Nothing, except my being mistaken in the man.

Q. Do you now know that he is going—whether he is going under an assumed name or not?

A. This man?

Q. Yes.

A. I do not know whether he did or not.

Q. Do you now know that he is not the man?

A. I know now that he is not.

Q. You only know that by what he savs or not?

A. By the slight remembrance I have of to; yes, sir.

Q. Do you remember what the man told you his name was, that came to see you?

A. No, sir.

Q. You saw his name on the paper?

A. I saw it, but I could not call that name now.

Q. You know then what he told you his name was what you saw on the paper?

A. Yes, sir; I know that.

Q. You are mistaken in what you stated about that being the man?

A. I thought it was the man, it looked very much like him.

Q. I thought you said you were positive?

A. I did not say I would swear to it.

Q. I thought you said you were positive?

A. I said I thuoght I was positive.

1027 Thereupon the government recalled the witness, **JOHN FOSTER**, who testified as follows:

Direct Examination.

Q. You have been sworn in this case before?

A. Yes, sir.

Q. Now, you say you are pretty well acquainted with Big Harry?

A. Yes, sir.

Q. Did you ever have any conversation in July of this year with Big Harry about his assisting anybody in whipping any one, and if so, whom, and what it was for?

A. About the time of the preliminary trial I had a conversation with Big Harry in the car in reference to the trial, and he seemed to be frightened, and during the course of the conversation he said to him that he was very sorry that he had held Squarehead, but that he would not have had any hesitancy in holding the parties who stole some of the things.

Q. When did you leave the Lockhart camps?

A. The fifteenth of September.

Q. Now, during the month of July, were you acquainted with the general reputation as to how Ballagher, [Gallagher], Grace and Bellinger and Big Harry and Angelo and Lemater were treating the men in that camp?

A. Leaving out Lemater, I will say they were treating them—in what way?

Q. What was there talk as to how they would treat these foreigners that were brought back?

Q. [A.] The reputation was that every time the foreigner was brought back, that he was whipped or had been whipped before and that everybody expected—

Q. Was that the general talk now and discussion among the laboring men of the camp? 1028

A. Among everyone of the old timers that had been there a long time, and ourselves also, the new comers.

Q. Who did you refer to as the "old timers?"

A. I mean laborers that had been there for a long time—been there over a year—

Q. You cannot tell what any particular individual may have said, but this was the general run of talk was it, among all the hands?

A. Yes, sir.

Cross-Examination.

Q. I interrogated you the other day about where you had been; you told me a number of places: you did not tell me you had been in and about Sing Sing, did you?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Re-Direct Examination.

Q. What were you doing at Sing Sing?

A. Superintendent for Brown, Harvey & Company, putting in four miles back out of Sing Sing, not in Sing Sing.

Re-Cross Examination.

Q. A good many people that are in Sing Sing had that sort—kind of business, had they not?

A. Sing twice.

Q. They had the same kind of business, they were doing "Sing twice," do you say? 1029

A. I do not understand the question.

Q. I say a good many people that are in Sing Sing had the same thing that you were doing?

A. Sitting on the witness stand and telling the truth, is that it?

Q. I think you understand my question?

A. And I answer it the same way, I told Mr. Gallagher, when he asked me what I was going to say, right in front of this business, that I was going to tell the truth and nothing but the truth.

Q. Lets get back to Sing Sing, that is an expression used around Sing Sing, the one you have just given me?

A. Used all over New York?

Q. Used more particularly in Sing Sing?

A. I do not know.

Q. You never heard them use it?

A. No, sir.

Q. You are familiar with the inmates, are you?

A. No, sir.

Q. You never saw them?

A. No, sir. I never saw them so far as I know of; there might be one around here so far as I know of.

Q. You do not know then?

A. No, sir.

Q. You do not know there is one here, do you?

A. No, sir.

Re-Direct Examination.

Q. You referred to some conversation with Gallagher, how long ago was that?

A. Right in front of the post-office.

1030 A. [Q.] How long ago?

A. The day before the trial.

Thereupon the government recalled the witness, ARTHUR BUCKLEY, who testified as follows:

Direct Examination.

Q. You have been on the stand before?

A. Yes, sir.

Q. You were the one brought in here to confront this consul, this man you spoke of as Consul Lesser?

A. Yes, sir.

Q. Did you see that man when he was up there?

A. Yes, sir.

Q. How close did you get to him?

A. Twenty-five feet away from him.

Q. Did you speak to him?

A. No, sir.

Q. Were you with Haas or any of the other crowd at the time he was talking to him?

A. No, sir.

Q. Did you leave that camp the same day?

A. Yes, sir.

Q. Where did you go?

1031 A. I went to the turpentine quarters.

Q. Who was the boss of those quarters?

A. Lemater was the head man.

Q. How long did you stay there?

A. Fifteen days.

Q. Who sent you away from there?

A. Lemater.

Q. Did you have a conversation about Lemater, about going away?

A. No, sir.

Q. Did you see him the day you left?

A. No, sir; he did not send me away from the turpentine camp, but he sent me away from the log camps.

Q. That is when you went in the log camp from there, did he carry you himself, how do you mean to say he sent you?

A. He told Huggins to take me over to the turpentine quarters.

A. [Q.] In your presence?

A. Yes, sir.

Q. Was that the same day the count was there?

A. Yes, sir.

Q. Did you tell anybody that day that you wanted to see this consul?

A. I told the blacksmith up there.

Q. Did you tell any of these gentlemen?

A. No, sir.

Q. What was the reason that you did not get to speak to the consul?

A. I suppose I got—

Q. Did anybody keep you from speaking to him?

1032 A. Yes, sir; Archie Bellinger was chasing me around there.

Q. Did you understand what he was doing, whether he was trying to keep you from seeing the consul?

A. To keep me from telling that he whipped—

Counsel for defendants did then and there move to strike out the statement of the witness as being merely the expression of opinion, which motion was then and there granted.

Q. What did Archie say to you?

A. When the consul was there I told the blacksmith that I was going to tell him how I got hit, and I went over and tried to talk to the consul, and Archie came over and said help them men swamp, and then I same around on the other side, and he says go over to the hospital, and then I knew he was trying to keep me from telling; then after that they took me to the turpentine quarters.

Q. Who took you?

A. Newlander came over with the buggy and give us to Lemater; Lemater told Huggins to take us to the turpentine quarters.

Q. Who?

A. Me and Squarehead.

Q. Did you ever see Squarehead whipped?

A. No, sir; I never seen him whipped, but I know he was whipped.

Q. You only know it from him?

A. Yes, sir.

Q. Well, you need not say that.

A. I seen him get hit one day from Fagin.

A. I saw him get hit and punched.

A. [Q.] Who hit him?

A. Fagin.

Counsel for the government did then and there ask the Court to strike that out, which motion was granted.

1033 Q. Who was it that whipped you?
A. Archie Bellinger.

Q. How long was it before this consul was up there?

A. I do not know, I know the consul came up there on the 28th of July, I do not know when he whipped him; sometime in July before that time.

Cross-Examination.

Q. You know that Squarehead was whipped because he told you so?

A. I seen him get whipped?

Q. You also know that he was whipped one time, because he told you so?

A. He told me that Gallagher whipped him?

Q. And you swear that what Squarehead said at any time is true?

A. No, sir.

Q. You just now swore it was because he said so?

A. I seen him get whipped from Fagin—that is only one, and he told me he got whipped by Gallagher.

Thereupon the government recalled JUDGE JAMES JOHNSON, who testified as follows:

Direct Examination.

Q. How long have you been an officer at Florala?
A. About two years.

1034 Q. How far is Florala from Lockhart?
A. About a mile.

Q. In the same county?

A. Yes, sir.

Q. In the same state?

A. Yes, sir.

Q. Who was your predecessor in office?

A. His name was Maples.

Q. How many deputy sheriffs and constables are there around Florala?

A. There is only one man that has been acting deputy sheriff; sometimes when he is away the Justice of the Peace can appoint a man to execute a paper.

Q. How long is Moneiky been a deputy sheriff or constable to your knowledge?

A. He was deputy when he went into office, I do not know how long before.

Q. Do you know who Moneiky's predecessor was?

A. No, sir.

Q. Do you know where Lemater's camps are; that is the turpentine camps of the Jackson Lumber Company?

A. Yes, sir.

Q. How far is that from Florala?

A. Five or six miles.

Q. In the same county?

A. Yes, sir.

Cross-Examination.

Q. You have Justice of the Peace District in Covington County—what is the extent of your jurisdiction? I
1035 mean what territory do you cover; is his turpentine quarters in your district?

A. I think it is.

Q. The district for which constables are appointed and located co-incide with the district of the Justice of the Peace, don't they?

A. Yes, sir.

Q. You have known of no other deputy sheriff down there, except Moneiky, since you have been in office?

A. No, sir; there has been a constable appointed when Moneiky was absent.

Q. These constables which are appointed are what is known as special constables to execute a special writ, and have no authority outside of that?

A. Yes, sir.

Q. And they have authority to do nothing else?

A. No, sir.

Q. Have you appointed a deputy constable or any of them to keep guard over the Jackson Lumber Company's men to keep them in there?

A. I do not remember that I have.

Q. There is one regular constable for the district?

A. Yes, sir.

Q. That constable can serve papers and arrest in that district?

A. Yes, sir.

Q. Now, then the constable what is known as the special constable can only serve the particular paper for which he is appointed by the Justice of the Peace?

A. That is the only paper, he has the right to serve.

Re-Direct Examination.

Q. Is there any deputy sheriff in your district besides Moneiky in the last two years?

A. No, sir; he was deputy for that part of the 1036 county.

Q. When Justices of the Peace are elected, are not constables elected at the same time?

A. Yes, sir.

Q. You don't mean to say that Moneiky was a constable and deputy sheriff at the same time?

A. He was elected constable and never did qualify, he never made bond, and what work he done was done under the sheriff.

Thereupon the government recalled the witness, DR. CRAIG, who testified as follows:

Direct Examination.

Q. Are you a physician at Laurel Hill?

A. Yes, sir.

Q. How long have you been there?

A. Practicing since 1902.

Q. You have done a good practice—it takes you all over the country around and about?

A. Yes, sir.

Q. Were you acquainted with the general reputation of Mr. Harlan, Mr. Bellinger, Mr. Gallagher or any of the defendants in the month of July as to how the foreigners was kept, and were carried back, were treated?

A. Only by hearsay.

Q. That is what we are coming to, what is the 1037 general rumor; what is that reputation?

A. No, sir; I never heard but one or two names.

Q. Name those one or two names.

A. I have Gallagher's and Bellinger's, and a man by the name of Big Harry.

Q. What was their reputation during that time as to how they treated these men who escaped and were carried back?

A. We heard there had been a little rough treatment up there.

Q. Was that reputation good or bad as to the treatment of the men?

A. We heard they had whipped them.

Q. Tell us what the reputation was as to Gallagher and Bellinger and Big Harry—was it good or bad?

A. In regard to these men?

Q. Yes, sir.

A. It was bad.

Cross-Examination.

Q. Now, that reputation as to what you have heard, has been around Laurel Hill, partly?

A. Yes, sir; since July.

Q. You are not so familiar at the camp, that is, as to what people say around Lockhart and the camps?

A. I know nothing of what has been said about the camps, except from such few men that worked there and came back.

Q. You cannot say that you know the general reputation of these men that you have mentioned at Lockhart and the log camps?

A. No, sir.

1038 Q. They are separate and distinct communities—Laurel Hill and Lockhart.

A. They are eight or nine miles apart.

Q. Entirely separate communities?

A. Yes, sir.

Q. Most of what you have heard has been since the return of Mihaly, has it not?

A. About that time mostly.

Q. They got to talking about that incident and some other matters?

A. Yes, sir; and all the men began to go through there, some few of them.

Q. Is that the general reputation of the community around Laurel Hill that you are speaking of—the general reputation?

A. Yes, sir; that is the general rumor prevailing through the community.

Re-Direct Examination.

Q. Is there or not considerable communication between your community and Florala and Lockhart?

A. There is a passing back and forth.

Q. You spoke of some men that came down from there to Laurel Hill and discussed this thing, were they men who had been working for the Jackson Lumber Company?

A. Yes, sir; but I did not say that I had heard them say anything.

Q. I so understood you.

A. I said some of the men worked up there; in regard to the two communities being apart—

1039 Defendant's counsel did then and there move the Court to strike out the statements of the witness, upon the ground that the reputation he has testified to is not in the community where the defendants were, and where they resided, where the alleged transactions are alleged to have been performed; but the Court did then and there overrule said motion, to which ruling of the Court defendants did then and there except.

Thereupon the government recalled the witness, JULIUS RHODES, who testified as follows:

Q. I believe you were sworn and testified in this case the other day?

A. Yes, sir.

Q. You were living at Laurel Hill in July of this year?

A. Yes, sir.

Q. Just state if you know Mr. Gallagher?

A. Yes, sir.

Q. Do you know Mr. Sandor?

A. I have seen him.

Q. Do you know Dr. Grace?

A. Yes, sir.

Q. Do you know Big Harry or Harry Halverson,

A. I do not know Big Harry.

Q. Do you know Archie Bellinger?

A. Yes, sir.

1040 Q. Do you know Mr. Lemater?

A. I have seen him.

Q. Do you know Mr. Harlan?

A. Yes, sir; I have seen him.

Q. Do you know what the general reputation as I have indicated and their treatment of the Jackson Lumber Company's employes at Lockhart and camps—you heard the reputation discussed about Laurel Hill?

A. Yes, sir.

Q. What is that reputation, good or bad?

A. It is bad.

Cross-Examination.

Q. Were all of these men's reputation discussed?

A. Yes, sir; those at the camp, those working men around the camp, the boss men.

Q. There are ten of those men and it is important to them to know which ones?

A. The employes of the Jackson Lumber Company.

Q. All the employes of the Jackson Lumber Company?

A. Those boss men?

Q. Whose reputation was it that you heard discussed?

A. Gallagher and those around the camp there.

Q. Who were those that you heard?

A. I heard a good many people speak.

Q. I am not talking about those you heard talking, who was is, Gallagher's, or whose reputation?

A. Gallagher and Archie.

Q. Was there anybody else?

1041 A. I do not know that I heard anyone's name mentioned.

Q. You never heard anybody's name mentioned except Gallagher's and Bellinger's?

A. Dr. Grace.

Q. Any others?

A. I do not think there was any other names.

Q. The only thing you heard with reference to Dr. Grace was in regard to the Mihaly incident on the 19th of July, was it not?

A. In regard to these foreigners; yes, sir.

Q. I mean the man he and Gallagher and Sandor brought back, that is the only thing you heard him discussed in connection with?

A. It was all those foreigners they had at the camps.

Q. Now, this reputation you have heard, was that the general rumors around Laurel Hill?

A. Yes, sir.

Q. Now, was it before or since the 19th of July?

A. It was since the 19th of July.

Q. That rumor that you have heard was since the 19th day of last July?

A. Yes, sir.

Q. You do not know what the general reputation is at Lockhart and at the log camps, do you?

A. No.

Q. They are entirely separate and distinct communities, are they not?

A. Yes, sir.

Q. I mean Lockhart and the log camps are entirely separate from Laurel Hill?

A. Yes, sir.

1042 Re-Direct Examination.

Q. Is there more or less communication between the two places, do the people pass two and fro?

A. Oh, yes; there is people passing to and fro all the time from the camp to Laurel Hill, and from there to Lockhart, and so on.

Q. You spoke while ago with reference to hearing Dr. Grace's, Mr. Gallagher's and Mr. Bellinger's reputation discussed, and I understood you to say the bosses—discussing the reputation of the bosses with reference to their treatment of the men—the bosses of the Jackson Lumber Company?

A. Those bosses out there in the woods; yes, sir.

Defendant's counsel object to the statement of bosses, unless the witness designates some of the defendants.

Government's Counsel:
I think it ought to be the men on trial.

By the Court:
Confine it to the men on trial.

Q. You say you have never heard any discussion or any talk about the treatment of the men up there before the 19th of July?

A. If I had I don't remember it.

Q. Don't you know of the men before this time, these foreigners passing through your town?

A. Yes, sir; and some passed there before that time.

Q. Was it generally discussed and talked about that they were running away from conditions up there?

A. Yes, sir.

Q. Are you not absolutely certain that all the discussion you heard was since the 19th of July?

A. Yes, sir.

Q. You may have heard it discussed before?

1043 A. I may have heard it before that time.

Cross-Examination.

Q. You have no distinct recollection of having heard any of the defendants discussed before that time, do you?

A. No, sir.

Thereupon the government recalled the witness, LEE DANIEL, who testified as follows:

Direct Examination.

Q. Will you refer to the stenographic notes of the last trial, and read the testimony of Harry Halverson as to the service or incident of holding the man in the harness barn who had been charged with stealing something, and read his testimony?

A. Yes, sir.

Thereupon witness read from his stenographic notes as follows:

Q. Did you not help Gallagher to whip this man who was charged with stealing these things?

A. No, sir.

Q. Didn't you see this old countryman, this old snaggled tooth fellow, who was selling water melons, come up there to
the barn where you and Gallagher had this fellow in
1044 there charged with stealing something?

A. No, sir.

Q. You were not there that day, not there at all?

A. I do not know what you have reference to.

Q. To the man charged with stealing something in the harness barn, do you know where that is?

A. Yes, sir.

Q. Didn't you help whip a man there?

A. No, sir.

Thereupon the government recalled the witness, F. W. MARSH, who testified as follows:

Direct Examination.

Q. I believe you were the commissioner that took the testimony at the preliminary examination in this case?

A. On the 30th of July was the first hearing, and the 3rd of August the second hearing.

Q. Was Dr. Lesser here at the beginning of that trial?

A. He was here on the day of the first hearing.

Q. Will you state to the Court and jury what conversation you had with him with reference to the Mihaly case?

A. He came into my office about nine o'clock in the morning, and said that he had been sent here by the Ger-
1045 man Immigration Society of the State of Alabama,
to look into the charges against the Jackson Lumber Company, regarding the holding or alleged holding of Germans—

Defendant's counsel did then and there object to the testimony upon the ground that no predicate had been laid for the impeachment of this witness or the contradiction of him, and upon the further ground that it is new matter, and not in rebuttal of anything testified to by Dr. Lesser, and is hearsay testimony.

But the Court did then and there overrule said objection; to which ruling of the Court, defendants did then and there except.

Q. And I had at that time—I showed to him the first affidavit on which warrant had been issued, and he sat in the office for sometime. I saw him shortly before I came into the Court room to begin taking testimony, and at that time Mihaly had been brought up; I did not know who Mihaly was; did not know his name or anything about him at the time; Mr. Lesser first came there, and I didn't know Mihaly was here definitely, that is, I had not seen him, but I told Mr. Lesser, the man that described the man as a Pole, of Polish nationality, that is the way the affidavit described him, and that he had been captured in Walton County, and I told Mr. Lesser before the trial began that that men [man] was here, and that, if he wanted to make his investigation, to go into the Court rook [room] and listen to testimony; that I was not informed about the facts at that time, and could not give him any facts relating to the transactions at all, but that he could go into the Court rook [room], and listen to them; but I did show him the affidavit.

Q. Is this the paper you showed to Dr. Lesser (handing affidavit to witness).

A. Yes, sir; that is the affidavit I showed him.

1046 Defendants counsel did then there move the Court to strike out the testimony of this witness, because it does not contradict, or tend to contradict anything stated by Dr. Lesser. But the Court did then and there overrule said motion, to which ruling of the Court defendants did then and there except.

Q. Now, you heard the testimony that was taken before you on that trial?

A. Yes, sir.

Q. Were the witnesses that testified before you—how many of them testified here?

A. Not all of the witnesses that testified before me are here; there were a good number of witnesses that were not held.

Defendants' counsel did then and there move the Court to strike out the answer of the witness upon the ground that it is irrelevant and immaterial.

By the Court:

I do not see the materiality yet.

Q. Now, you say some of the witnesses that testified before you testified here?

A. Yes, sir.

Q. Those witnesses that testified before you, some were placed in jail at that time?

A. Yes, sir.

Q. To be held as government witnesses?

A. Yes, sir.

Q. Did those witnesses testify before you and were placed in jail have testified in this trial at this time, have they not?

A. I think all but two of those that I committed have testified.

1047 Q. Have you heard their testimony on this trial, is there any difference or substantial difference of their testimony at this trial and their testimony given before you at that time?

But defendants' counsel did then and there object to the said question upon the ground that it is irrelevant and immaterial, and upon further ground that it calls for an opinion of the witness, and upon the further ground that it is not the best evidence of the testimony, as it already appears, of the testimony given by the witnesses at that trial and on this.

But the Court did then and there overrule said objection, to which ruling of the Court defendants did then and there except.

A. In undertaking to answer that, I think the only extent to which I would go, would be to say that their testimony was taken stenographically under my directions, reduced to writing and filed by me; I have not heard all the testimony here, and would not undertake to compare it.

Q. I will ask you if these men who made these complaints here before you came to you with the complaints in a body?

A. No, sir.

Defendants' counsel did then and there move the Court to strike out the statement of the witness upon the ground that it is irrelevant and immaterial, and on the further ground that the acts of the witness could not bind the witness in any manner.

But the Court did then and there overrule said motion, to which ruling of the Court defendants did then and there except.

Q. How did they come?

Defendants' counsel did then and there object to the said question upon the ground that it is irrelevant and immaterial, and upon the ground that the acts and conduct of witnesses could not in any manner affect the defendants, and
1048 upon the further ground that no witnesses' character can be established by his conduct upon a particular occasion.

By the Court:

The Court thinks it is in direct contradiction of the assertion that they were coming and acting in concert, that has been, if not directly, has been intimated several times by the questions—I presume—I do not know that I ought to presume—the Court thinks that the government is entitled to contradict that proposition if they can, as far as that goes.

But to the ruling of the said Court the defendants did then and there except.

A. I do not recall that more than two of any witnesses that appeared in this trial came to my office at any one time, originally.

Q. Do you know that as a matter of fact that Trudich Mihaly, one of the witnesses in this trial, was brought down here by the defendants?

A. I only know that he appeared here in company with Mr. Newlander.

Q. Did he go back with Mr. Newlander?

A. No, sir.

Q. Do you know whether as a matter of fact Mr. Lesser's report of his investigation at the Lockhart camps was published before your findings in the investigation you were holding in July and August?

Defendants' counsel did then and there object to the said question upon the ground that it is irrelevant and immaterial and upon the further ground that the acts and conduct of the witness Lesser could not in any manner bind the defendants, or either of them.

But the Court did then and there overrule said objection, to which ruling of the Court defendants did then and there except.

1049 A. I do not know the date of the publication of his official report; I only know the day of the publication of what purported interviews of his in the papers, and that preceded the final hearing here on August third.

Defendants' counsel did then and there move the Court to strike out the statement of the witness upon the ground that it is not the best evidence; but the Court did then and there deny said motion; to which ruling of the Court defendants did then and there except.

Q. Did you afterwards see his report as published?

A. Yes, sir; some one sent me a copy of it.

Q. Can you refer to the paper in which this—

A. I have not Mr. Lesser's report so that I cannot refer—

Q. You heard the statement of Mr. Gallagher with reference to paying the fare of Mihaly and bearing the expenses of his coming down here, can you state whether or not the government has repaid that amount to the Jackson Lumber Company people?

A. I arranged with Mr. Harlan at the last hearing to have that returned, and made out my pay roll and handed it over to the United States Marshal with that understanding; that is all I know, but whether he received it or not I do not know.

Q. Do you know or did you meet Mr. McCorran, the special agent of the government, who was down here?

A. Yes, sir; I know him.

Q. Can you state whether or not he resembles Mr. Wharton?

A. Very striking, he was a man of about same age, both had dark gray curly hair—short cropped gray mustache, and McCorran's face was a little bit fuller; he was just about Mr. Wharton's size, and build, and there was a very striking resemblance between the two men; there is a very great difference in their voices however.

Q. Do you know if he had a limp in his walk?

1050 A. I am not so certain about that.

Q. When did you see Mr. McCorran?

A. I think it was either the 16th or the 17th of August.

Q. Do you know what his business was?

A. Yes, sir.

Q. What?

A. He showed me his credentials.

Q. What?

A. Special agent of the Department of Justice.

Q. To do what—there are several kinds of special agents?

A. Special examiner, or special agent in the Department of Justice. He had been in Birmingham for a considerable period before that; I can only state his business from the conversation with him, and knowing about what line of business he was in.

Q. Well, tell it.

A. He was under the direction of the Attorney General directly to investigate prosecutions that are in the hands; in the Department of Justice.

Q. Does that involve his getting up testimony in cases?

A. Yes, sir; that is his special business, collecting testimony.

Q. Preparing and getting up evidence for the prosecution?

A. Yes, sir.

Q. When was it he left here to go up into that country?

A. I think it was the night of August 18th.

Q. Do you know when he completed his work up there?

A. No, sir; I got a letter from him indicating that he had been there about ten days.

1051 Thereupon the government called in rebuttal HARRY BROWN, who, having been duly sworn, testified as follows:

Direct Examination.

Q. Your name is Harry Brown?

A. Yes, sir.

Q. Where were you working in July of this year?

A. Lockhart.

Q. Who for?

A. The Jackson Lumber Company.

Q. What was your occupation?

A. Driving a team.

Q. Were you engaged in any other occupation at any other time?

A. Yes, sir.

Q. With what?

A. Swamping at the lumber camp.

Q. When did you begin work up there?

A. The twenty-eight of November a year ago.

Q. And you worked up there until the twenty-eight of November?

A. No, I was gone three months.

Q. When did you leave?

A. About the first of April.

Q. When was the last time you left up there?

A. That was the last time I left there.

Q. When were you up there last; were you up there recently?

A. Up to the first of this month.

Q. Working for them until then?

A. No, I went to Poley.

Q. Were you working in the kitchen or in the dining room?

A. I worked four days in the dining room.

Q. Were you present at any time—were you back in the dining room when the difficulty occurred between 1052 Mr. Gallagher and a man named Jordsman?

A. Yes, sir.

Q. Just state to the jury what you saw of that difficulty?

A. I worked in the kitchen, helped wait on the table and this Jordsman was taken back and he was on the platform of the office and Mr. Gallagher asked him into the office or pulled him in and kicked him and punched him in side.

Q. What did the Bulgarian do to Mr. Gallagher?

A. I did not see him do anything.

Q. Did you hear Mr. Gallagher say anything?

A. No.

Q. Where were you at the time?

A. I was about the center of the dining room.

Q. In the middle of the dining room?

A. Yes, sir.

Q. You say he pulled him into the office; where is his office with reference to the dining car?

A. They join together.

Q. Now, at any time in July did you see anybody whipped there by any one?

A. I seen Squarehead whipped there.

Q. By whom?

A. By Mr. Gallagher.

Q. Did any one else take any part in that whipping?

A. Big Harry held him while Mr. Gallagher whipped him. He hit him with an axe handle.

Q. Did he hit him any more?

A. No, Squarehead run away.

1053 Q. Did you see any other whipping there?

A. Maginnis.

Q. You saw that?

A. Yes, sir.

Q. What was the occasion of that?

A. Well, Maginnis refused to sleep with the foreigners, Polarks.

Q. Were you right present?

A. About four feet behind where they were fighting.

Q. What did Maginnis say and what did Gallagher say and do?

A. I did not hear the conversation between the two, but I seen Mr. Gallagher punch him and walk up and hit him in the jaw and then they had some loud talk and Mr. Gallagher punched him again, so Maginnis had his coat on and he handed his coat to another fellow and he was going to go for Mr. Gallagher, but he pulled his gun, he had it in his left hand while he punched him with his right and he kicked him.

Q. Did you hear any bad language used by Gallagher or Maginnis?

A. No, sir.

Q. Now, you were there during July of this year. Did you see and know Archie Bellinger?

A. Yes, sir.

Q. Did you see Dr. Grace?

A. Yes, sir.

Q. Did you see Big Harry?

A. Yes, sir.

Q. Did you see Sandor?

A. Yes, sir.

Q. Did you see Lamata?

A. Yes, sir.

Q. Do you know what the general reputation of these men was among the men as to how they treated the men

1054 and the foreigners in the camp at work?

A. I know the reputation.

Q. Was that good or bad?

A. Bad.

Cross-Examination.

Q. You worked at these camps from November a year ago up until March?

A. Yes, sir.

Q. What nationality are you?

A. I was born in Ireland.

Q. How long have you been in America?

A. Twenty two years.

Q. How old are you now?

A. Thirty-eight.

Q. You worked continuously from November until March?

A. Yes, sir.

Q. Then you went away in March and where did you go?

A. To Poley, Alabama.

Q. How long did you work at Poley?

A. About two months and two weeks.

Q. Then what did you do—go back?

A. The latter end of June.

Q. And did you go to work at the log camps then?

A. Yes, sir; I went to work in the camps.

Q. What was the nature of your employment?

A. When I came back Archie Bellinger put me in the kitchen.

1055 Q. What date did you get back there in June?

A. I do not remember. It was about the twenty-second, I guess.

Q. Were you a cook or did you just simply wait on the table.

A. I helped around the kitchen and waited on the table.

Q. Now, at the time you saw the fight with the Bulgarian were there many people in the dining room?

A. Quite a number.

Q. About how many?

A. I do not know—a good many.

Q. Do you remember any of them?

A. No.

Q. You do not remember any one at all that was in the dining room?

A. Not at that time.

Q. Where did the fight take place—in the office?

A. Yes, sir.

Q. Were you anywhere about the door of the dining room?

A. I was about the middle of the dining room.

Q. Was there anybody in the door of the dining room?

A. No.

Q. Was there anybody on the platform between the door of the office and the door of the dining room?

A. Nobody. There was one man run out. There was a few around there.

Q. Were they on the platform between the two cars?

A. Mr. Gallagher and the Bulgarian.

Q. You mean there was nobody on the platform except them?

A. There was people run out after eating dinner.

Q. Was anybody on the platform?

A. No.

Q. They were all out?

A. Yes, sir.

1056 Q. On the ground?

A. Going out.

Q. Were some of them in the door going out?

A. No.

Q. Where were they going out?

A. Inside the car.

Q. None of them were out on the platform going out?

A. No.

Q. There was nobody in the door of the office?

A. No, except the Bulgarian and Mr. Gallagher.

Q. After they got inside did the people crowd up on the platform?

A. They crowded up, yes, when they heard the row going on.

Q. On the platform?

A. Inside the car.

Q. They stood up to look on in the dining car?

A. Yes, sir.

Q. Nobody crowded up on the platform?

A. No.

Q. And the fight occurred inside of the office?

A. Mr. Gallagher pulled him inside, both doors were open, he pulled him inside and got him against the wall.

Q. You have been to Mr. Gallagher a good many times trying to get money since you have been down here, have you not?

A. No, not except the wages coming to me this time, no.

Q. Do you know this young man sitting here writing? Have you seen him before?

A. Yes, sir.

Q. Did you not have a talk with him right out there in the hall and didn't he ask you whether you had seen anything
about this or what you knew about the case, and
1057 and didn't you tell him you did not know a single
thing of any of the transactions there except the Maginnis case, and didn't you relate the Maginnis case to him in detail?

A. He never asked me anything about—

Q. Didn't you state to him that you did not know of any other transactions—that you never saw any other transaction?

A. No, I did not. He asked me about the Maginnis case and that is all he asked me and that is all I told him.

Q. Do you remember young man named Mr. Loftin?

A. Yes, sir.

Q. Did you not state in the presence of Mr. Loftin that you did not know anything at all of any fight—never saw any fight except the row between Mr. Gallagher and Maginnis?

A. No, he never asked me about anything else.

Q. Did you ask Mr. Harlan for any money?

A. I asked him if he would pay me what is coming to me.

Q. You did not ask him for any money outside of that?

A. No, sir.

Q. I will get you to locate your position in that dining car for me. How many men were there between you and the door?

A. Two men.

Q. Was you sitting at the end of the table?

A. No.

Q. Had there been men eating dinner and gone out?

A. Yes, sir.

Q. Who was that?

A. I do not know.

Q. Did you see him down there?

A. No.

Q. Now long since you had finished your dinner?

A. I do not know.

1058 Q. Was there any men sitting on this side?

A. Yes, sir.

Q. How long is that table?

A. Thirty-five feet long.

Q. And you were about the middle of it.

A. Yes, sir.

Q. How near is the table to the door?

A. About two feet.

Q. What is the width of the door to the dining car?

A. About six feet.

Q. What is the width of the door to the office?

A. About twenty-four inches.

Q. The dining car door is about six feet and the office door is about twenty-four inches?

A. Yes, sir.

Q. Did they have screen doors?

A. Yes, sir.

Q. The platform was all open to view?

A. Yes, sir.

Re-Direct Examination.

Q. How many tables were there?

A. One long table.

Q. How many spreads had there been—that is different sets of men had been to the table eating about this time?

A. You mean on each side of the table.

Q. There had been more than one table?

A. One long table and all set at same time.

Q. Well, but they don't all eat at one time?

1059 A. No, not in July.

Q. What day did you come down here?

A. Sunday afternoon.

Q. With whom?

A. Mr. Gallagher.

Q. What did you come for?

A. He brought me down to go as a witness for him.

Q. When did you come to my office to see me?

A. Monday evening.

Q. Did you make any statement in reference to being a witness for Mr. Gallagher to me?

But defendants' counsel did then and there object to the said question upon the ground that he cannot corroborate himself by stating that he made a statement to somebody else. But the Court did then and there overrule said objection, and defendants' counsel did then and there except the ruling of the Court.

Q. Did you give any reasons to the district attorney why you did not want to testify?
A. Yes, sir.
Q. Why?

Defendants' counsel did then and there object to said question. which question was then and there sustained.

Q. Had you had any interview with the attorneys at that time—at the time you came to me—anybody that was talking for Mr. Gallagher?
A. No.
Q. It was since that time they had this conversation with you?
A. Yes, sir.
Q. Did you inform Mr. Gallagher?
A. I never told him.
Q. That you could not be a witness for him?
1060 A. No, I never told him.
Q. Have you got any feeling—when did you make your demand upon Mr. Harlan or Mr. Gallagher for your money, since Monday or before?
A. I made it on Monday. I have made it every day since I came down here. I asked them what time they was going to pay me off. I could not get paid off down here in Pensacola.

Re-Cross Examination.

Q. You came down here to testify in behalf of Mr. Gallagher?
A. He brought me down upon that condition.
Q. With the understanding that you would testify for him?
A. Yes, sir.
Q. You asked him for money?

A. No, I asked him for what was coming to me.

Q. You asked him for money?

A. For my wages.

Q. Then his lawyers talked to you—two of them?

A. Just simply told me would call me later on.

Q. They went over it very fully with you and after they had gone over it very fully with you did they advise you that you would not be needed as a witness?

A. Yes, sir.

Q. Then you did not get the money and then you went after you were brought down here as witness for the defendants and made whatever statement you made to Mr. Sheppard?

A. No.

Q. Do you know Frenchy?

A. Yes, sir.

Q. Did you go into the office of Mr. Sheppard to see him with Frenchy?

1061 A. Yes, sir.

Q. Did Frenchy take you in there?

A. Yes, sir.

Q. You did not go in there voluntarily then?

A. I went in with Frenchy. I told him I was going in there and he told me he would show me where the office was.

Q. Then you hounted Mr. Sheppard up to tell him what you knew?

A. Yes, sir.

Q. That was after your conference with the counsel for the defendants, with these young men, Mr. Loftin and Mr. Blount, that you went in with Frenchy?

A. No, before that.

Q. Do you know just what day it was you did go into Mr. Sheppard's office?

A. Monday evening.

Q. Were you drinking then or sober?

A. I was sober. I had a couple of drinks.

Re-Direct Examination.

Q. When did you have this talk with these lawyers—Mr. Gallagher's lawyers?

A. I cannot remember now. It was, I think it was Tuesday morning, Tuesday about eleven o'clock.

Q. Since you had been in there—you had not seen them—it was since you saw me—you did not talk to them up to that time?

A. No.

1062 Q. In reference to the conversation with them what did they discuss with you?

But counsel for defendants did then and there object to the said question, which objection was then and there sustained.

Thereupon the Government re-called as a witness CHAS. HASS, who testified as follows:

Direct Examination.

Q. Have you testified here before in this case?
A. Yes, sir.
Q. Did you see the consul here—were you brought in here the other day when the consul was here?
A. Yes, sir.
Q. Did you see him when he was up to the camps?
A. Yes, sir.
Q. Do you remember what time it was?
A. I do not remember the month.
Q. Did you speak to him then?
A. Yes, sir.
Q. Did you or not make any complaint to him?
A. I was come home from work and he was come to me. He says he is not a Jew. He asked me how I got treated and asked me if anybody hit me and I was afraid to tell him, because I saw Angelo shake his hand.
Q. Had Angelo been your boss?
A. Yes, sir.
Q. Had you seen Angelo whip anybody?
A. What for, you hit him and I hit him again.
Q. You had seen him hit Squarehead because Squarehead tried to talk to the consul?
A. Squarehead tried to talk to him.
1063 Q. That is the reason you did not tell all of your story to the consul—Angelo was nearby?
A. Angelo was shaking his hand—I was good to you—and he goes in to the office and talks to him.
Q. Who was it you went into the office with?
A. Angelo and the consul went into the office.

Cross-Examination.

Q. Where were you when the consul was there—when you did talk to him what little you did talk?

A. I was right out there where got to go into the cars.

Q. Where you keep the horses?

A. No where you go to eat.

Q. Did you talk to him anywhere else besides that place?

A. No, because I did not have no time to talk to him.

Q. He spoke in German and you spoke in German, didn't you?

A. Yes, sir.

Q. Didn't you talk to him where you were coming out of the barn with some horses?

A. No, I didn't talk to him with a horse at all.

Q. Were you working with the horse that day?

A. No, not that day.

Q. You did not work with any horse that day?

A. No.

Q. What were you doing?

A. I was working with Angelo on the railroad.

Q. What was the nature of the work you were doing with Angelo?

A. Carrying rails.

1064 Q. Did you work there in the forenoon?

A. I don't know what you mean by forenoon.

Q. In the morning?

A. Yes, sir.

Q. Did you work there in the afternoon?

A. I was working in the morning.

Q. And then you went back there after dinner?

A. Yes, sir.

Q. And worked until night. Now, didn't you point Angelo out while you were talking to Mr. Lesser—didn't you point Angelo out as being off over to another place and told him you were not then working under Angelo?

A. No, he was standing by the car and talking there to Angelo.

Q. You know Mr. Lamata, don't you?

A. Yes, sir.

Q. Is it not a fact that Mr. Lamata and another fellow drove up in a buggy at the time you were talking to the consul?

A. No, sir; I was working with Angelo and that fellow says he is not a Jew, he is not a Jew.

Q. Who said that?
A. That man said that.
Q. Which, this man (pointing to Sandor)?
A. Yes, sir.
Q. Who did he say that to?
A. He said that to the consul.
Q. This man says there is no Jew?
A. Yes, sir.
Q. He said that to the consul?
A. Yes, sir.
Q. And the consul went and spoke to you?
A. Yes, sir.
Q. What was the conversation between you and
1065 the consul?
A. German.
Q. What did you talk to him about?
A. He asked me how I got treated. I says no good and he asked me if anybody hit me and I was afraid to tell him.
Q. What were you afraid of?
A. Because he was standing there with Angelo.
Q. What is his nationality?
A. Italian but he can speak English all right.
Q. He spoke English all right?
A. Yes, sir.
Q. Do you speak German?
A. Yes, sir.
Q. You were talking to Mr. Lesser in German—you were not talking in Italian?
A. No.
Q. Were you afraid that Angelo would understand?
A. I had so much sense he was going to say that to him in English because I heard him say I want to speak to you.
Q. Who was going to tell him in English?
A. The consul
Q. You believed that the consul was going to tell Angelo in English?
A. Yes, sir; he says shaking hands with me and says I want to speak to you.
Q. Angelo could not speak to the consul in German?
A. The consul could speak English, too.
Q. Did he tell you that he came there to find out how you boys were treated?
A. No, he just asked me how I got treated.
Q. That is the only question he put to you?
1066 A. Yes, sir.
Q. Where was Buckley then?

A. I did not see Buckley over there. I seen another fellow that works there.

Q. You told the consul that you were treated badly?

A. Yes, sir.

Q. Were you not afraid to tell him that—that he would tell Angelo in English?

A. Yes, sir; I was afraid to tell him.

Q. Did you tell him that?

A. What?

Q. That you were treated badly?

A. That is what I told him but I did not tell him that Angelo hit me because I had to go back with Angelo after dinner to work.

Thereupon the government recalled in rebuttal FRANK DUNKEY, who testified as follows:

Direct Examination.

Q. Do you know Sandor?

A. Yes, sir.

Q. Did you see him the day that you left Lockhart for good?

A. Yes, sir.

Q. Did you have any conversation with him about coming to Pensacola?

A. When I came down to Pensacola he told me where you go. I says I going to Pensacola. He says don't think you are
going as a witness but the other man that was with
1067 me says no, I am not going. He says you had better go to Montgomery.

Q. He asked you before that if you were going down here to be a witness?

A. Yes, sir; he says don't think you are gong to be a witness.

Q. And advised you to go to Montgomery?

A. Yes, sir.

Cross Examination.

Defendants thereupon moved to strike out the statement of the witness upon the ground that it is a declaration and acts of one alleged conspirator and move to strike it out on behalf of all the other defendants because it is not admissible after the alleged conspiracy, the purpose of which has been completed. But the Judge did then and there deny said motion. To which ruling of the Court the defendants did then and there except.

Q. Mr. Sandor told you to leave there—ordered you away from there didn't he?

A. No. Mr. Harlan told me to get out of there and we go back in the office and Mr. Sandor come after that and he told me do you think you don't go to Pensacola for witness and that was and he says no he says Mr. Sandor told him better go to Montgomery and then he went back in the office and brought out a piece of paper.

Q. After telling you and Cary he asked if you were going down here as a witness?

A. Yes, sir.

Q. And then he told you you had better go to Montgomery. Did you tell him you were going to Montgomery?

A. I did not say so. I told him I was going to Pensacola.

1068 Q. And notwithstanding the fact that he told you to go to Montgomery and not to come to Pensacola he then give you passes so that you could get to Pensacola?

A. Well, he don't give me pass—just to go from Lockhart.

Q. Did you tell him you were going to Pensacola and he gave you a pass?

A. Don't need no pass to Pensacola. Only pass to left Lockhart.

Q. But he knew you were coming to Pensacola; you told him so?

A. Yes, sir.

Q. And after you told him that he gives you a pass?

A. Yes, sir.

Q. So that you could get out from there, this cordon of guards?

By Juror:

We understand that that was a pass on the railroad?

By Defendants' Counsel:

No, only a pass through the cordon of sheriff's lines.

Q. You say now that Mr. Harlan told you to get out of Lockhart?

A. Yes, sir.

Q. Didn't you say the other day that he told you you could not get out until you paid your board bill?

A. No, sir; I didn't say so. He says don't want an easy job for sixty or seventy cents a day and says you can't go because you owes for board.

Q. What makes you so irritable?

A. Because he told me a lie.

Q. Now, did Mr. Sandor tell you you could not go until you paid your board?

A. No, Sandor had nothing to do with it.

Q. I am not asking you about that. Did he tell you you could not get out of there until you paid your board? You can answer yes or no.

1069 A. He did not say anything for that cannot go or not because he heard Mr. Harlan tell us we should go.

Q. Now, Mr. Harlan then did not undertake to tell you to stay there until you paid your board?

A. Yes, sir; he said first time so.

Q. That is what I am driving at. He told you you could not get out until you paid your board?

A. That is first time said so.

Q. Well, I asked you just now if you stated that and you said no.

A. I didn't pay no board.

Q. When was it Mr. Harlan told you that?

A. In the same morning when we came down and went to the office at eight o'clock.

Q. Now, then, you have just said that Mr. Harlan told you to get out of there?

A. Yes, sir; because we asked him for easy job and he says I can give you sixty or seventy cents job, that is what he says and he says you had better get out of here in twenty-four hours and in twenty-four hours I left Lockhart.

Q. Was it after that that you had the conversation with Sandor?

A. That was before then.

Q. And Mr. Sandor had told you that he would give you a pass—a paper that would help you to pass those sheriff's lines?

A. He don't tell us in the office—he goes out and gets it.

Re-Direct Examination.

Q. Had you been sick before you went up there to get a change of jobs?

A. I was before sick; I fell down in the saw mill.

1070 Q. That is why you wanted to see Mr. Harlan and get a job?

A. I was fell down in the saw mill.

Q. Now, the first time you went to Harlan you—

A. That was the same morning, he tells me first time that I stay here and pay board what I do, and then he says better get out of here in twenty-four hours.

Q. Did you owe him any board?

A. I don't think I owed him because I worked for five days out in camp and then I worked for six days in the saw mill, and I never got no pay for nothing and then I was paid fifty cents each month for insurance and Doctor Trammell got pay and I got no penny for that.

Q. All this occurred the same day that you left there—these two or three talks with Mr. Harlan?

A. Yes, sir; the same morning.

Q. And that was the time that Sandor got you the passports?

A. After we came out of the office and gone back when he gives us pass.

Q. And it was at that time he told you to go to Montgomery instead of to Pensacola?

A. Yes, sir.

Thereupon the government recalled J. C. SATTERWHITE, who testified as follows:

Direct Examination.

Q. You testified in this case before?

A. Yes, sir.

Q. How long were you at work as an operator for
1071 the Jackson Lumber Company?

A. Eleven months.

Q. Did you know the general reputation of Mr. Gallagher and Dr. Grace about Lockhart and about the mills there as to their treatment of the men, these foreigners that would run away and be brought back?

A. I heard it.

Q. You heard it discussed?

A. Yes, sir.

Q. What was that reputation, good or bad? Do you know the general reputation around there, having heard it talked, in the month of July?

A. I heard it talked; yes, sir.

Q. Was that talk general, pretty general among the employees and others?

A. Yes, sir.

Q. What was that?

But counsel for defendants did then and there announce that they would like to test the witness and ask a few questions, but the Court did then and there refuse such request, to which refusal the defendants did then and there except.

Q. Is that reputation good or bad?

A. Bad.

Q. Now, Mr. Satterwhite, do you remember on any particular occasion or time in July when Dr. Grace left the office with the express view or express purpose of going after a man?

A. Yes, sir.

Q. Can you recall the incident of Mr. Gallagher, Dr. Grace and Mr. Sandor driving up to the office of the commissary there with a man—a foreigner in the buggy?

A. Yes, sir.

1072 Q. Do you remember what day of the month it was?

A. I do not.

Q. Was it in July?

A. It seems to me that it was.

Q. Was it a foreigner—where was the foreigner—in the buggy?

A. He was in the rear of the buggy.

Q. And the other three men were in the buggy?

A. There was no one in the buggy but him; they had all gotten out.

Q. About what time of day was that?

A. Between six and seven o'clock; it was just after dark.

Q. That day did you hear any conversation between Dr. Grace and Mr. Harlan?

A. Yes, sir.

Q. State what that was?

A. Before the Doctor went to Laurel Hill he came into the office and made the remark we are ready to go to Laurel Hill for that man and says have you got any instructions before leaving and Mr. Harlan says when you get the man give him a scare and it will probably prevent others from leaving.

Q. That occurred in your presence?

A. Yes, sir.

Q. What was Dr. Grace just about to do then?

A. He was fixing to leave for Laurel Hill, so he said.

Q. Do you know of anybody that went with him?

A. No. sir; not personally.

Cross Examination.

Q. You are acquainted with the streets and blocks?

A. Yes, sir.

1073 Q. What is the length of these blocks? Where were you when they drove up?

A. I was in the office.

Q. Where did they stop?

A. When I saw the buggy it was standing in front of the commissary.

Q. Was the man in front of the buggy at that time?

A. Yes, sir.

Q. How far from the commissary?

A. Four or five steps.

Q. What is the width of the street there?

A. To make a rough guess at it it is I will say forty or fifty feet.

Q. Don't you know that it is laid off 100 feet according to scale?

A. No, sir; I did not know how it is laid off.

Q. Do you know anything about the length of one of these blocks?

A. No, sir.

Q. Can you give me—guess the length of a block?

A. I will say from the corner of the hotel to the commissary is 150 feet—just making a rough guess at it.

Q. You saw this man when they drove up?

A. No, sir.

Q. You saw them after they did drive up?

A. Yes, sir.

Q. How long did you observe these people after they drove up in the buggy?

A. I suppose I stood up there and watched them for thirty minutes.

Q. Did you see them drive away?

A. No, sir.

Q. Did you see any licks struck the foreigner there?

A. No, sir.

Q. Do you know whether that day you speak of having seen
them in the buggy and the time they went away from
1074 there—do you know whether Porter the bookkeeper
—you answered the phone didn't you?

A. Yes, sir; I was phone operator.

Q. And also telegraph operator in the same office?

A. Yes, sir.

Q. They were accustomed to telephone in for various things?

A. Yes, sir.

Q. And you would answer the phone?

A. Yes, sir.

Q. Did Mr. Porter the bookkeeper telephone you that morning?

A. Some one telephoned me but I don't know who it was. I answered the phone.

Q. And was it anything in reference to this man?

A. That they caught?

Q. Yes, sir; what was the message—

A. Some one says some foreigner or one of the foreigners at the camp has stolen something; come out right away, but whether it was on this special day or not I could not say.

Q. Did they tell you to come out right away?

A. They told me to tell Dr. Grace to come out right away.

Q. Well, do you know whether Mr. Harlan had any communication with them or anything of the kind?

A. No, sir.

Q. Did you tell Dr. Grace? Did you give him that information?

A. Yes, sir.

Q. Do you know when Dr. Grace left?

A. For camp or Laurel Hill?

Q. For camp?

A. No, sir; I did not see him any more.

Q. Do you know when he left for Laurel Hill?

A. No, sir.

1075 Q. When was it you heard him making this remark in the office?

A. Sometime in the morning. I do not know what time of day exactly but it was between ten and eleven o'clock, to the best of my recollection.

Q. That was after you had gotten the phone communication?

A. I do not think it was on the same day.

Q. I thought you said just now you were not certain?

A. I said I was not certain. I say yet I am not certain. I don't think it was on the same day.

Q. What reason have you for thinking it was on different days?

A. I could not now give any special reason but to the best of my recollection it was on different days.

Q. You had only one communication of that kind from Mr. Porter did you?

A. As I said awhile ago I do not know whether it was Mr. Porter or some one else.

Q. Did you have more than one communication of that kind?

A. No, sir.

Q. You did not have but one communication of that kind?

A. No, sir.

Q. Do you know whether that was in July or not?

A. I could not say positively; it was about that time.

Q. You say you told Dr. Grace of that commnication or did you tell Mr. Harlan or did you tell both?

A. I told Dr. Grace. I did not tell Mr. Harlan.

Q. Did you ever communicate at any time any such information to Mr. Grace except this particular time?

A. No, sir; not that I recollect of.

Q. I will ask you to mark on this diagram about where they stopped the team?

(Witness here marked the spot on the diagram.)

Government announced that it closed its testimony.

1076 Thereupon the defendants called in rebuttal Mr. LAMATA, who testified as follows:

Direct Examination.

Q. Do you know the day that Dr. Lesser was at the camps of the Jackson Lumber Company?

A. Yes, sir.

Q. Where were you in the early part of that day?

A. I left my team a day or two before that at DeFuniak Springs and had come to Pensacola and I left Pensacola the night before Mr. Lesser went to our camp and I went back to DeFuniak Springs and stayed there that night. That morning about daylight I got up and went to the stable and had the team sent around to the hotel and left the hotel to go back to the camp and got there—I do not know—it must have been twelve o'clock or whether it was after one I do not know, but I think it was between twelve and one o'clock and I drove up in the quarters, my quarters were right alongside the log camp and I stopped at the well to let Mr. Newlander out and to speak to somebody and I looked over towards the barn and saw this man Lesser over there and wondered how he got there as I had seen him and left him here I thought and he at that time was talking to Charley Haas and Buckley and several others—I do not know that he was speaking directly to them but they were around. I presume I was as far as from here across the street from them.

Q. Was Angelo about there at that time?

A. No, sir.

Q. Well, now, did you see Bellinger anywhere about there directing those boys in anyway?

A. Not that I recollect of. I do not recollect seeing him that day at all. If so it was later than that along up at the camp.

1077 Q. Do you remember seeing Buckley there?

A. Yes, sir.

Cross Examination.

Q. What time of day did you arrive there that day?
A. It was after twelve o'clock, but whether it was after one I do not know.

Thereupon the defendants recalled W. S. HARLAN in rebuttal, who testified as follows:

Direct Examination.

Q. Mr. Harlan, did you make the map or have anything to do with the making of the map of Lockhart?
A. Yes, sir.
Q. What is the width of the streets?

But counsel for the government did then and there object to said question, which objection was then and there sustained.

To which ruling of the Court the defendants did then and there except.

Q. What is the length of those blocks?

But government's counsel did then and there object to the said question, which objection was then and there sustained.

To which ruling of the Court defendants did then and there except.

Q. Mr. Harlan, you heard the statement of Mr. Satterwhite just now with respect to the conversation between you and Dr. Grace on the morning of the day that Trulich Mihaley was brought back there. What about that? 1078
A. I had no conversation that day at all with Dr. Grace to my recollection. I know I did not about that.
Q. You know you had no conversation in regard to that matter?
A. No, sir; I know I did not.

Thereupon the defendants to maintain the issues in their behalf recalled Dr. GRACE, who testified as follows:

Direct Examination.

Q. You heard the statement just now of Mr. Satterwhite with respect to a telephone communication which he delivered to you on one occasion. Was that communication that was furnished you by Mr. Gallagher—phone communication on the day that you went after Trulich Mihaley?

A. Yes, sir.

Q. It was on the same day?

A. Yes, sir.

Q. Now, you heard the statement of Mr. Satterwhite to the effect that you and Mr. Harlan on that occasion you asked Mr. Harlan what should be done and Mr. Harlan said for you to give the man a scare. Is that true or false?

A. No, sir; I did not.

Q. Did you have any conversation at all with Mr. Harlan about it?

A. None whatever. Mr. Satterwhite was the only man in the office when I went in.

1079

Cross Examination.

Q. Did you testify the other day that you went to Mr. Harlan and got the dogs?

A. No, sir; I said I went to his house.

Thereupon the defendants to maintain the issues in their behalf recalled as a witness Dr. CRAIG, who testified as follows:

Direct Examination.

Q. How long have you been a practicing physician?

A. Since 1901.

Q. Are you a graduate of a regular medical college?

A. I am.

Q. Do you know whether clotted blood will make blue places and cause infection without receiving some external bruise?

A. Please repeat the question?

Q. I say will—can there be an infection and blue places arise from clotted blood without a bruise—some external force or bruise?

A. No, sir; there could not well be clotted blood without some external force.

Q. How about blue places?

A. Congestion could cause blue spots, intense inflammation.

Q. Congestion would cause blue spots would it not?

A. Yes, sir.

Q. And cause inflammation?

A. Congestion is a rather technical point—infection would cause it.

1080 Q. May that or may not that arise from the slightest scratch?

A. Yes, sir; if it should become violently infected.

Q. What do you mean—explain to the jury what you mean by infection?

A. I mean where there is an entrance of an infectious germ into the disease and sets up inflammation.

Q. The slightest scratch if infection sets in from some sore might produce all these conditions might it not?

A. What do you mean—might produce congestion and blotches?

Q. Yes, sir?

A. Yes, sir.

Q. And that might produce puss might it not?

A. It would produce puss.

Q. And it might become inflamed and cause amputation might it not?

A. Yes, sir.

Q. Depending upon the character of the infection?

A. Yes, sir.

Q. Now, I want the jury to understand what you mean by infection. Any slight bite of a spider or a bug or a pin scratch if it comes in contact with something which produces infection might result in that might it not?

A. If an infectious microbe should gain entrance to this and the tissues were in condition in a receptive condition it would cause that condition.

Q. What are the usual mediums of this infection? Are there various mediums?

A. What do you mean by mediums?

Q. I mean, for instance, you might take a piece of clothing the scratch of a pin and if the clothing is not clean and it became damp with water would it be a means of infection?

1081 A. The only way microbe organs could gain entrance would be through an abrasion of the skin from some sourc.

Q. I will take this case. Dew I suppose is as pure as distilled water?

A. Yes, sir.

Q. Dew itself would not cause an infection?

A. No, not if on sterilized surface.

Q. But in contact with clothing and you dampen that clothing any bite or scratch might produce infection?

A. Yes, sir; any ordinary clothing would be bad.

Q. That dew coming in contact with the grass and things not sterilized might produce infection might it not?

A. Yes, sir.

Q. Do you know from your own practice whether children and other people that have been bitten by red bugs have had trouble with their legs?

A. Very frequently sores.

Cross Examination.

Q. Did you ever seen Jordsman?

A. Yes, sir; I have seen him.

Q. Were you ever called to see his leg?

A. No, sir.

Q. These answers are purely theoretical?

A. Purely theoretical insofar as he is concerned.

Q. Now, I will give you a hypothetical case and see. Suppose you were called to see a man that had a leg that was swollen from just below his knee and his foot was swollen until

1082 the skin was almost protruding beyond the toes out even with the toes and the leg was swollen and inflamed, pretty much all involved, there were several blue marks upon that leg and there was no abrasion, no scratch of the skin, clotted blood under the blue spots and quite an accumulation of puss all under that skin. Now, that case, would it in your judgment be a case of red bug poison or a bruise?

A. Why, if there were no evidences of redbug bites or anything I should ask the man what the origin of the trouble was.

Q. Suppose there was no skin broken, just the skin was all intact but there was black bruises or spots of clotted blood and the leg was much swollen and the man was with high fever at the time, the foot was involved and swollen and the skin was almost to the end of the toes, in your judgment would that be due to red bug bites or bruises?

A. I should probably suspect bruises from the blue spots although I do not see how—I should not think that a man could be swollen that badly from a bruise without breaking the skin. The puss would take several days to form. It is purely a hypothetical case.

Q. The puss had formed in considerable quantities?

A. It would take some time, several days, but the clots, blue spots, would indicate bruises. It would depend on the character of the spots. You can have a congested limb with splotches from inflammation.

Q. But is that not a mark that is left after the thing is cured?

A. Yes, sir.

Re-Direct Examination.

Q. These blue spots might or might not be there while the leg was in that swollen condition?

1083 A. Yes, sir. Discoloration of violent trometism would cause different colored spots which would in a short while be distinguishable.

Q. Is trometism clotted blood—is it different from congestion?

A. Violent trometism would cause a considerable more clots. The other is a kind of superficial break of the blood vessels, but violence would cause a more pronounced discoloration.

Q. You think in this hypothetical case given you just now that it would be likely that the skin would be broken in a case of that kind to produce such a condition as the hypothetical case stated to you by the counsel?

A. Why, yes, I think so. It would depend on how long that had occurred.

Q. Now, we will take the case which has just been put to you and we say twenty days after the supposed injury; what about it then?

A. And this condition existed twenty-five days after the supposed injury?

Q. Yes, sir?

A. And the skin was not broken?

Q. Yes, sir?

A. I should not think that you could tell the cause of it without inquiry.

Q. You do not believe that any person could tell the cause —whether it was from a bruise or whether infection had set in in that length of time?

A. Not twenty-five days.

Q. How about twenty days?

A. No, sir. Of course, that is an opinion.

Q. You would have to make some inquiry?

A. I should think so.

Q. Do you know Mrs. Brooks?

1084 A. Yes, sir.

Q. How long have you known her—Mrs. Lizzie Brooks?

A. About six years.

Q. Do you know her general reputation in the community in which she lives for chastity?

But counsel for the government did then and there object to the said question, which objection was then and there sustained. To which ruling of the Court the defendants did then and there except.

Q. Do you know her general reputation for truth and veracity?

A. I know nothing about her reputation for truth and veracity one way or the other.

Q. Do you know whether she is living with any husband?

But counsel for the government did then and there object to the said question, which objection was then and there sustained.

To the ruling of the Court the defendants did then and there except.

The defendants to further maintain the issues in their behalf thereupon called Mr. W. A. BLOUNT, Jr., who having been duly sworn, testified as follows:

Direct Examination.

Q. Did you have a conversation with this witness Harry Brown the other day in respect to this case?

A. I did, sir. I do not remember the exact day. It was either Monday or Tuesday. I am of opinion that it was Tuesday during one of the recesses. 1085

Q. Will you state the conversation?

A. Mr. Gallagher told me that he had a witness in the hall and he expected to put him on and he asked me to talk to him before I put him on and I went out in the hall and asked him if he knew, or what he knew rather with regard to the bringing back of men and the guarding of the men and the beating of the men at the Lockhart camp. He said he knew absolutely nothing except in regard to the Maginnis incident and he told me of the Maginnis incident just as he narrated it from the stand here.

Q. Did you specify in that interview with him the name of Squarehead?

A. I did not specify at all. I ask him—I said it was during recess and it was only a few moments and I asked him what he knew in regard to these beatings, bringing of the men back and the guarding of the men in the camp and he said he knew nothing except in regard to the Maginnis incident.

Q. The Jordsman incident was not mentioned?

A. No specific incident mentioned by me at all.

Cross Examination.

Q. He mentioned the specific incident which he claimed to know about himself?

A. Yes, sir. I asked him generally and he mentioned the Maginnis.

Q. Do you know whether he narrated the same thing in the presence of Mr. Loftin?

A. I think so, and I called Mr. Loftin and Mr. Lamata came out there and heard him narrate the Maginnis incident just as he narrated it here.

Q. Do you know where Mr. Loftin is to-night?

1086 A. No, sir.

Q. Do you know whether he expressed an opinion as to where he was going?

A. I heard him say that he was going to Century to-night to a meeting of the Knights of Pythias.

Thereupon the defendants to further maintain the issues in their behalf recalled Mr. BELLINGER, who testified as follows:

Direct Examination.

Q. You heard this woman Lizzie Brooks testify to-day didn't you?

A. Yes, sir.

Q. You heard her statement that a man was struck a lick by a crowd there in Lockhart and that you were present in that crowd didn't you?

A. I did not understand it.

Q. Well, I believe it was at the log camp?

A. Yes, sir; I heard her.

Q. Was that true?

A. No, sir; it was not. I never heard of it at all. I never was there if such a thing occurred.

Q. You never heard of it before?

A. No, sir.

Q. Did you know Lizzie Brooks when she lived there?

A. I have seen her several times.

Q. What month was she there?

A. I could not just say.

Q. Did her mother live there at the camp?

1087 A. Yes, sir; at the quarters.

Thereupon the defendants to further maintain the issues in their behalf recalled Mr. SANDOR, who testified as follows:

Direct Examination.

Q. Were you out at the log camp during the time that Dr. Lesser was out there?

A. I have been out to the log camp on that day but not at the time Mr. Lesser was there. I had occasion to go there five o'clock in the morning the first train leaves Lockhart for the log camp and I had some business there and I came in from the log camp to Lockhart on the first train that leaves there, eight or quarter past eight. I did not see Mr. Lesser there at all.

Q. You were not about there at any time when Dr. Lesser was there?

A. No, sir.

Cross Examination.

Q. What Hungarian did Dr. Lesser have with him?

A. I do not know. I remember he having testified here that he spoke only to those Hungarians who could speak a little German because a majority of them did speak a little German but as far as I am concerned he did not have me there.

1088 Thereupon the defendants in order to further maintain the issues in their behalf recalled ROBERT GALLAGHER, who testified as follows:

Direct Examination.

Q. What is the width of the door in the dining room car out there?
A. About twenty-eight inches.

Cross Examination.

Q. When did you measure it?
A. Since this thing came up.
Q. The other day?
A. No, some time ago. I measured all the doors.
Q. Are both doors the same width?
A. Yes, sir; that is the screen door occupies a little of that space. The screen doors has two and a half inches on each side and about two and a half inches or three inches strip down the center.

Re-Direct Examination.

Q. What is the width of the office door?
A. The same thing.

Re-Cross Examination.

Q. Who was with you when you measured them?
A. I do not remember that any one was with me.

Re-Direct Examination.

Q. Do you know the length of the dining car?
A. Fifty-six feet on the inside clear. The table is forty-six feet. The room where the door swings here at the end—at each end there is a door which swings clear of the table. 1089
Q. You say the table is forty-six feet long?
A. Between forty-six and forty-seven feet.
Q. Do you know the width of it?
A. No, it is about forty-two inches, somewhere between forty and forty-four inches.

Re-Cross Examination.

Q. You did not measure that did you?
A. No, sir.

Thereupon the defendants to further maintain the issues in their behalf recalled HARRY HALVERSON, who testified as follows:

Direct Examination.

Q. You are familiar with those doors are you?
A. Yes, sir; it is an ordinary panel door.
Q. Ordinary size doors in cars are they?
A. Ordinary size door something like that door over there, a single door over there.
Q. They are not six feet wide either one of them?
A. No.

1090 Thereupon the defendants further to maintain the issues in their behalf recalled as a witness JNO. W. LAMATA, who testified as follows:

Direct Examination.

Q. Are you familiar with the doors in the dining room and the office cars?
A. Yes, sir.
Q. What is the width?
A. They are ordinary two foot six doors.
Q. That is your judgment of them?
A. Yes, sir. I have never measured them.

Thereupon the defendants further to maintain the issues in their behalf recalled as a witness W. S. HARLAN, who testified as follows:

Direct Examination.

Q. Do you know the width of the doors in those cars?
A. I do not know exactly. I drew the plans for the cars.
Q. About what are they?
A. They are either two foot four or two foot six.
Q. Have you seen the cars since they were built?
A. Yes, sir.
Q. Did they correspond with the plans?
A. The last time I saw them they did—about a month ago —less than two months ago anyway.
Q. And in your judgment that dining room door was how wide?
A. Two foot four or two foot six. If it was two foot four it would be twenty eight inches and if two foot six it would be thirty inches.
Q. Now, the door in the office?
1091 A. It is the same size.

It is agreed between counsel that the transcript of the testimony taken before the commissioner may be used by counsel on either side for the purpose of showing the testimony of witnesses before the commissioner, in order to close the testimony in the case to-night.

Thereupon after argument by counsel on both sides the Court charged the jury of its own motion as follows:

Gentlemen of the Jury: The defendants W. S. Harlan, Robert Gallagher, Oscar Sandor, E. P. Newlander, Walter E. Grace, Archie Bellinger, Harry Halverson and John W. Lamata are indicted and on trial before you for a violation of the statutes of the United States relating to conspiracy to commit the crime of peonage. The said statute reads as follows:

> Every person who holds. arrests, returns, or causes to be returned, held, arrested, or returned, or in any manner aids in the arrest or return of any person to a condition of peonage shall be punished, etc.

They are indicted for conspiracy to arrest, to return divers persons who are alleged by the grand jurors to be unknown and who had been before the 19th day of July in the employ and were indebted to or alleged to be indebted to the Jackson Lumber Company, a corporation, and who had qitted the employ while in debt to, or alleged to be in debt to the Jackson Lumber Company, with the intent to compel them and
1092 each of them to work for the Jackson Lumber Company as aforesaid, to be held by it to work out a debt claimed to be due to the said Jackson Lumber Company by the said divers persons; and in furtherance of said conspiracy, and for the purpose of effecting the object thereof, the said Robert Gallagher, Walter E. Grace and Oscar Sandor, did, by threats and force, within Walton County, arrest one Trulich Mihaley, who was alleged to be of the class of persons set forth in the portion of the indictment charging conspiracy, and that they restrained him of his liberty, and against his will and consent did compel him to accompany the said three persons to the place of business of the Jackson Lumber Company; and that afterwards on the twenty-first day of July in like manner, Robert Gallagher, Oscar Sandor and John Atwell did arrest and return two persons, whose names are unknown, but who are described in the indictment.

The defendants are all presumed to be innocent until proved guilty beyond a reason able doubt, and that government in prosecuting the case must prove every material allegation in theindictment.

A conspiracy is a combination and agreement or understanding between two or more persons to commit an illegal act. The offense charged against the defendants is that they conspired, confederated and agreed to arrest divers persons, as before explained, with the intent that they should be returned to a condition of peonage; and second, that they did conspire to arrest the said divers persons with the intent that they should be held in a condition of peonage.

The unlawful agreement or combination is the gist of the offense, and is mostly evidenced by some act of the parties. While conspirators might proclaim their evil design from the house-top, it is seldom that they act so foolishly. It is rarely that the criminal purpose is even put in writing privately, and
it need not be spoken of verbally amongst them, pro-
1093 vided there is a common understanding or purpose to
accomplish the criminal act. This can mostly be determined only by the acts of the parties, and the circumstances surrounding them, and their actions. It is not necessary to prove that all the parties charged met together and came to an explicit understanding, or formal agreement, or that they all agreed formally upon the details or plans by which the unlawful combination should be made effective. The offense is sufficiently proved if it satisfies the jury that two or more parties charged entered into an agreement to accomplish the common and unlawful combination, which was arrived at by mutual understanding, followed by some act done by any of the parties for the purpose of carrying it into execution.

It is not necessary that each of the parties should in person commit the unlawful act, or that they should be present, or even in the jurisdiction of this Court at the time of the commission of the overt act; if it was fairly within the contemplation of their agreement that the overt act was to be done by one or more of the associates within the jurisdiction of this Court; then the overt act of one is the act of all, and renders all the associates indictable within this jurisdiction, if any overt act was committed herein.

Each may perform separate and distinct acts in forwarding the combination, and proof is not required of participation of each in every step by which the unlawful scheme is carried forward.

Nor is it necessary that it should be proved that all of the parties originally combined, or that each was an original contriver, of the mischief, or that all were even acquainted with each other.

Mere passive knowledge of the crime or illegal act of the other is not sufficient to show conspiracy; some active partici-
pation is necessary. If there was an unlawful agree-
1094 ment to do the act charged between two or more
parties, and at any period thereafter a new or ad-

ditional party came into it for the purpose of aiding the purpose of the plan first agreed upon, and does any act in furtherance of the original design, he is from that moment a fellow conspirator, and is responsible for all the consequences which flow from such participation.

While it is not essential that each conspirator should know the exact part which every other is to perform, you must be satisfied that the party charged with participation in any of the steps taken in furtherance of the original scheme had knowledge of the parties whom he was assisting were engaged in some unlawful design. Such guilty knowledge may be inferred from his conduct if the acts proved are of a nature to satisfy you that the party was conscious of the fact that the parties with whom he was associated were engaged in doing wrong.

The Court charges you, gentlemen of the jury, that in your consideration of this case, which is an indictment against these defendants for conspiracy, to establish a conspiracy it is not necessary that there should be evidence of a formal agreement. It is sufficient if separate details of the transaction as it was carried out indicated with requisite certainty the existence of a preconcerted plan or purpose and if you believe the evidence in this case shows a detail of facts and circumstances in which these alleged conspirators were involved separately or collectively, and which are clearly referable to a preconcert of the actors, and there is a moral probability that they would not have occurred as they did without such preconcert, it is sufficient if it satisfies you beyond a reasonable doubt.

The offense of conspiracy under the laws of the United States is sufficiently proved if the jury is satisfied
1095 from the evidence in this case that two or more of the
defendants indicted entered into an agreement to accomplish the design of arresting and returning divers persons as above described to a condition of peonage, and if the evidence shows such design was arrived at by a tacit understanding which was followed by some act done by one or all of the parties charged in the indictment in furtherance of that agreement; the joint assent of all may be proved by direct testimony or may be inferred from facts which will satisfy the jury.

You could not consider evidence of acts and facts not directly connected with the conspiracy in the indictment as raising any presumption that because other wholly disconnected things were done by the defendants therefore the defendants were capable of and for that reason actually did what is charged in the indictment. But on the other hand if you believe from the

evidence not directly concerning the conspiracy to arrest these divers persons, that a general system of business existed at the time of their arrest at and about the Lockhart camps, with the knowledge and co-operation of these defendants, or any two of them, involving an understanding between them, or any such two of them that such and such things were to be done as occasion might arise, as part of such system of business and that such system included the intimidating and chasing and returning of foreign and other employees in order to make them work out their indebtedness to the Jackson Lumber Company, and you believe that these divers persons were arrested with intent to return them to work out such indebtedness to said company; then you have a right to conclude that there was an understanding between such two or more defendants to arrest these divers persons, as charged in the indictment. In other words, proof of a general existing understanding that
any indebted foreign workmen of the company, that
1096 is, workmen recently arriving from New York, who
should run away should be pursued and arrested in
order to be returned to work out the indebtedness, would be proof of the alleged conspiracy to arrest these divers persons described in the said indictment for the same purpose. Although you believe that one of the alleged conspirators may never have known of the existence of the persons described in the indictment, yet if he participated in such general understanding as stated, he would be guilty of the conspiracy to arrest these divers persons before described.

The defendants at the bar are not charged with assault and battery, or with kidnapping, or with any of the numerous offenses which the State of Florida, or the State of Alabama might have jurisdiction, but are here in this Court under the Federal Statutes for conspiring to arrest and return certain individuals to a condition of peonage. That is, to compel them to work against their will, to pay a certain debt which they owe to the party demanding the labor. That is the case and the only case you are to try.

That is the only one the Government has attempted to make and is the only case the Court submits to you, and you are to say upon the evidence whether you are satisfied that the defendants are guilty as charged or not. You are the judges of the weight of the evidence and the credibility of the witnesses, and the Court proposes to submit all the vast mass of testimony that has been offered in this case to you for determination of this question.

There is a class of testimony that has been admitted for

your consideration, tending to show other unlawful acts of like character to those charged in this indictment, committed by one or more of the defendants at or near the time of the alleged formation of the conspiracy charged in this indictment. Of this class the evidence relating to the transactions between Gallagher and certain of the witnesses at Fort Valley; the arrest of William Albert, C. Krum and
1097
Joseph Barsoda, and the circumstances attending these transactions are illustrations. Acts of the defendants prior or subsequent to the alleged offense which logically tend to prove the criminal intent or guilty knowledge, is admissible, and may be considered by you and likewise where the crime in question is one of a system of criminal acts, occurring so near together in point of time, and so nearly similar in means as to lead to the logical inference that they are mutually dependent, and committed in pursuance of the same deliberate criminal purpose, and by means planned beforehand evidence of such acts is admissible, even though these acts amount to another criminal offense. But such evidence is not admissible for the purpose of proving that defendants committed the crime charged against them in this indictment, but to show their purpose, plan, intent or knowledge, or to show that the acts charged against them were not the result of accident, mistake or inadvertance, or to rebut a defense which would otherwise be open to the accused.

In weighing the testimony of witnesses you should especially look to the interest which the respective witnesses have in the result of the case, when the witness has a direct personal interest in the result of the trial the temptation is strong to color, pervert or withhold the facts. The law permits the defendant at his own request to testify in his own behalf. The defendants have availed themselves of this privilege. Their testimony is before you and it is for you to determine how far it is worthy to be believed. The deep personal interest they have in the result of this trial should be considered by the jury in weighing their testimony in determining how far or to what extent, if at all, it is to be credited.

Where a conspiracy occurs in a foreign jurisdiction, and one or more of the conspirators comes in person into
1098
this district and within the jurisdiction of this Court, and here, in pursuance of such conspiracy, does the overt act charged the indictment under which he is being tried, by such transaction such conspiracy is renewed within this district, and this Court would have cognizance of such crime of conspiracy.

In considering the William Albert, Joseph Barsoda and C. Krum incidents you are charged that you are to be governed by the following principals of law applicable thereto:

If a master or employer procures the arrest of a servant who has deserted while indebted to his employer with the intent of producing on the mind of the servant a condition which leaves him no choice, but to return to his employment or suffer criminal prosecution and incarceration, and the prosecution is instituted for the express purpose of inducing the servant to return against his free will, and the jury is convinced that the motive of the master in procuring the arrest of the servant was for the purpose of compelling him to return to work out the debt, such master would be guilty of the crime denounced by the statute against peonage.

The result of the proceedings to arrest may be of two kinds: First, after the arrest and before trial, the servant, at the solicitation of the master, may return to the service, the officer permitting the dismissal of the charge; or, second, there may be some form of trial, a nominal or substantial fine imposed, which the master pays, and adds to the indebtedness of the servant, and returns the servant to the employment. But it makes little difference what outward form the proceeding may take, if the intention of the master is illegal, as already described, he would be guilty of the crime denounced by the statute.

1099 In order to arrive at a verdict of guilty as to any of the defendants, you would have to find two or more of them guilty under this indictment. You may find any two or more guilty, and the balance you may find not guilty, as the evidence, in your judgment, may warrant. In your verdict, in the event you should find any two or more of the defendants guilty, and less than the whole number, you should set out the names of those found guilty in substantially the following language:

"We, the jury, find the defendants, so and so, guilty as charged, and the defendants, so and so, not guilty."

In the event you should find the whole number guilty, your verdict should be substantially:

"We, the jury, find the defendants guilty as charged."

Evidence of good character may always be considered by the jury, and lead them to scrutinize the evidence against the defendants, and further, should be considered as an independent fact in their favor; but if after giving such testimony this effect the whole evidence in the case is sufficient to warrant a conviction the jury are not authorized to withdraw from the other evidence its proper effect, or to refuse to draw from it the legitimate conclusions.

And the Court did then and there give the following instructions to the jury at the request of the defendants' counsel:

5. The offense charged in the indictment is a conspiracy. The offense does not consist of both the conspiracy and the act done to effect the object of the conspiracy, but of the conspiracy alone.

Therefore you cannot find the defendants guilty, although you may find that one or more arrested Trulich Mihaley, John Doe or Richard Roe with the intent that he should be returned to a condition of peonage, or held in a condition of peonage, unless you find such arresting by one or more of the de-
1100 fendants was in furtherance of a conspiracy entered into between the defendants for the purpose charged in the indictment.

6. If you find from the evidence that the defendants, or one or more of them arrested Trulich Mihaley, or Johe Doe or Richard Roe with the intent that they or any of them should be returned to a condition of peonage, or held in a condition of peonage you cannot find the defendants guilty unless you find further that a conspiracy had been entered into by the defendants to do said act.

7. A conspiracy to arrest one with intent to return or hold him in a condition of peonage and the actual arresting of such person with such intent, are two separate and distinct offenses, and before you can find the defendants guilty under this indictment, you must find that they entered into a conspiracy to arrest divers persons to the grand jury unknown with intent to return or hold them in a condition of peonage. It will not be sufficient to prove that the defendants or one or more of them actually arrested Trulich Mihaley or Richard Roe or John Doe.

8. Before you can find the defendants guilty there must be something more than proof of mere passive cognizance of fraudulent or illegal action of others to sustain conspiracy. If, therefore, you should find from the evidence in this case that there was a conspiracy as charged in the indictment, then, in order to effect any person with the conspiracy so as to make such person liable under the indictment, you must find that such person did something more than entertain a mere passive knowledge of such conspiracy. You must find that such

person did some act or made some agreement showing an intention to participate in some way in such conspiracy.

9. Mere passive knowledge of the illegal action of others is not sufficient to constitute conspiracy. Some active participation is necessary. While it is not essential that
1101 each conspirator should know the exact part every
other is to perform, you must be satisfied that a party charged with participation in any of the steps taken in furtherance of the original scheme had knowledge that the parties whom he was assisting were engaged in some unlawful design.

10. The mere knowledge, acquiescence or approval of the act, without co-operation or agreement to co-operate, is not enough to constitute one a party to a conspiracy. There must be intentional participation in the transaction, with a view to the furtherance of the common design and purpose.

11. Before you can find the defendants or any of them guilty you must find that such defendant or defendants entered into or came into the conspiracy prior to the doing of the overt act which was the object of the conspiracy.

12. Before you find any of the defendants guilty, the evidence must satisfy you beyond a reasonable doubt that the defendants entered into or came into the conspiracy prior to the performance of the overt act which was the object of the conspiracy.

13. The mere fact that the defendant, W. S. Harlan, is general manager of the Jackson Lumber Company, and as such manager has general supervision of the affairs of the company, will not make him criminally responsible for the acts of the employees of the company, unless it is further shown that such acts were authorized by him, or that he participated therein with knowledge at the time of such participation that the parties with whom he participated were engaged in the doing of an unlawful act.

14. Although you find that one or more of the defendants arrested Trulich Mihaley or Jone Doe or Richard Roe with the intent charged in the indictment, you cannot find the defendant, W. S. Harlan, guilty because of the mere fact that he is

general manager of the Jackson Lumber Company.
1102 Before you find him guilty you must further find that there existed between him and the other defendants a pre-concerted plan and purpose to arrest Trulich Mihaley, John Doe or Richard Roe with the intent to return or hold him in a condition of peonage.

15. The defendants are presumed to be innocent, and the burden is upon the United States to prove every material allegation in the indictment beyond a reasonable doubt, before you can find them or any of them guilty.

20. The value of circumstantial evidence depends upon the conclusive nature and tendency of the circumstances relied upon to establish any controverted fact. They must not only be consistent with guilt, but inconsistent with innocence. Such evidence is insufficient where, assuming all to be proved which the evidence tends to prove, some other reasonable hypothesis of innocence may still be true, for it is the actual exclusion of every reasonable hypothesis but that of guilt which invests mere circumstances with the force of proof. What circumstances will amount to proof can never be matter of general definition. The legal test is the sufficiency of the evidence to satisfy the understanding and conscience of the jury. Absolute, metaphysical and demonstrative certainty is not essential to proof by circumstances. It is sufficient if they, with all the other evidence, produce moral certainty to the exclusion of every reasonable doubt, and you must acquit the defendants, if upon any reasonable hypothesis you can reconcile the evidence with the defendants' innocence.

21. The criminal guilt in conspiracy resides in the intention of the party to the agreement construed in connection with the purpose contemplated, and the mere fact that the conspiracy has for its object the committing of an act which may be unlawful, followed by the committing of such act, does not constitute the crime of conspiracy, unless it is found that the
1103 parties were connected by a criminal intent, and this question of intent is for the jury. The intent must be a corrupt one, and it is not sufficient that it be merely to do an act which is illegal.

24. In order that the defendants or any of them be convicted of conspiring to return to or for arresting to return to a condition of peonage Trulich Mihaley it is essential that

you should find first from the evidence beyond a reasonable doubt that such arrest or return, if any was made, was for the purpose of holding him to some service in this discharge of an indebtedness then owing by him, and if you should have a reasonable doubt as to whether this was the purpose of such arrest and returning, if any, then none of the defendants could be convicted on account of such arrest or return, even though such arrest and return was wholly unauthorized and illegal.

25 In order that the defendants or any of them can be convicted for conspiracy to be held or arresting for the purpose of returning to, or for returning to a condition of peonage the individuals referred to in the indictment as John Doe and Richard Roe, it is essential that it be shown by the evidence beyond a reasonable doubt that at the time of such arrest or return, if any such arrest or return was made, these individuals were indebted to the person, firm or corporation to whose employment the defendants were returning or arresting to return such individuals, and that such arrest or return was for the purpose of holding such individuals to service in the discharge of such indebtedness.

Thereupon and before the jury retired to consider of their verdict defendants' counsel did then and there object to the following portions of the charge given by the Court of its own motion, to-wit:

"It is not necessary that each of the parties should in person commit the unlawful act or that they should
1104 be present, or even in the jurisdiction of this Court
at the time of the commission of the overt act; if it was fairly within the contemplation of their agreement that the overt act was to be done by one or more of the associates within the jurisdiction of this Court; then the overt act of one is the act of all, and renders all the associates indictable within this jurisdiction, if any overt act was committed herein."

And thereupon and before the jury retired to consider of their verdict defendants' counsel did then and there except to the giving of the following portion of the charge given by the Court of its own motion, to-wit:

"The offense of conspiracy under the laws of the United States is sufficiently proved if the jury is satisfied from the evidence in this case that two or more of the defendants indicted entered into an agreement to accomplish the design of arresting and returning divers persons as above described to a condition of peonage, and if the evidence shows such design was arrived at by a tacit understanding which was followed by some act done by one or all of the parties charged in the indictment in furtherance of that agreement; the joint assent of all may be proved by direct testimony or may be inferred from facts which will satisfy the jury."

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did then and there except to the giving of the following portion of the charge given by the Court of its own motion, to-wit:

"You could not consider evidence of acts and facts not directly connected with the conspiracy in the indictment as raising any presumption that because other wholly disconnected things were done by the defendants, therefore the defendants were capable of and for that reason actually did what is charged in the indictment. But on the other hand, if you believe from the evidence not directly concerning the conspiracy to arrest these divers persons, that a general system of business existed at the time of their arrest at and about the Lockhart camps, with the knowledge and co-operation of these defendants, or any two of them, involving an understanding between them or any such two of them, that such and such things were to be done as occasion might arise, as part of such system of business and that such system included the intimidating and chasing and returning of foreign and other employees in order to make them work out their indebtedness to the Jackson Lumber Company, and you believe that these divers persons were arrested with intent to return them to work out such indebtedness to said company; then you have a right to conclude that there was an understanding between such two or more defendants to arrest these divers persons, as charged in the indictment. In other words, proof of a general existing understanding that any indebted foreign workmen of the company, that is, workmen recently arriving from New York, who should run away should be pursued and arrested in order to be returned to work out the indebtedness, would be proof of the alleged conspiracy to arrest these divers persons described in the said indictment for the same purpose. Although you believe that one of the alleged conspirators may never have known of the existence of the persons described in the indictment, yet if he participated

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in such a general understanding as stated, he would be guilty of the conspiracy to arrest these divers persons before described."

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did then and there except to the giving of the following portion of the charge given by the Court of its own motion, to-wit:

"There is a class of testimony that has been admitted for your consideration, tending to show other unlawful acts of like character to those charged in this indictment, committed
by one or more of the defendants at or near the time
1106 of the allegd formation of the conspiracy charged in
this indictment. Of this class the evidence relating to the transactions between Gallagher and certain of the witnesses at Fort Valley; the arrest of William Albert, C. Krum and Joseph Barsoda, and the circumstances attending these transactions are illustrations. Acts of the defendants prior or subsequent to the alleged offense which logically tend to prove the criminal intent or guilty knowledge, is admissible, and may be considered by you and likewise where the crime in question is one of a system of criminal acts, occurring so near together in point of time and so nearly similar in means as to lead to the logical inference that they are mutually dependent, and committed in pursuance of the same deliberate criminal purpose, and by means planned beforehand evidence of such acts is admissible, even though these acts amount to another criminal offense. But such evidence is not admissible for the purpose of proving that defendants committed the crime charged against them in this indictment, but to show their purpose, plan, intent, or knowledge, or to show that the acts charged against them were not the result of accident, mistake or inadvertence, or to rebut a defense which would otherwise be open to the accused."

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did then and there except to the giving of the following portion of the charge given by the Court of its own motion, to-wit:

"Where a conspiracy occurs in a foreign jurisdiction, and one or more of the conspirators comes in person into this district and within the jurisdiction of this Court, and here, in pursuance of such conspiracy, does the overt act charged the indictment under which he is being tried, by such transaction such conspiracy is renewed within this district, and this Court would have cognizance of such crime of conspiracy."

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And thereupon and before the jury retired to consider of their verdict the defendants' counsel did then and there except to the giving of the following portion of the charge given by the Court of its own motion, to-wit:

"In considering the William Albert, Joseph Barsoda and C. Krum incidents you are charged that you are to be governed by the following principals of law applicable thereto:

If a master or employer procures the arrest of a servant who has deserted while indebted to his employer with the intent of producing on the mind of the servant a condition which leaves him no choice but to return to his employment or suffer criminal prosecution and incarceration, and the prosecution is instituted for the express purpose of inducing the servant to return against his free will, and the jury is convinced that the motive of the master in procuring the arrest of the servant was for the purpose of compelling him to return to work out the debt, such master would be guilty of the crime denounced by the statute against peonage.

The result of the proceedings to arrest may be of two kinds:

First, after the arrest and before trial, the servant, at the solicitation of the master, may return to the service, the officer permitting the dismissal of the charge; or, second, there may be some form of trial, a nominal or substantial fine imposed, which the master pays, and adds to the indebtedness of the servant, and returns the servant to the employment. But it makes little difference what outward form the proceeding may take, if the intention of the master is illegal, as already described, he would be guilty of the crime denounced by the statute."

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did request the Court to give the following charge to the jury:

1. "Under the evidence in this case you will find the defendants not guilty."

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Which request the said Judge did then and there refuse, to which refusal the said defendants did then and there except.

And thereupon, before the jury retired to consider of their verdict the defendants' counsel did request the Court to give the following special charge to the jury:

2. "Before you can find the defendants guilty under this indictment, you must find beyond a reasonable doubt that the conspiracy was entered into within the Northern District of Florida."

Which request the said Judge did then and there refuse to which refusal the defendants' counsel did then and there except.

And thereupon before the jury retired to consider of their verdict the defendants' counsel did request the Court to give the following special charge to the jury:

3. "It will not be sufficient to prove that the overt act or acts in pursuance of the conspiracy was committed within the Northern District of Florida, but you must find that the conspiracy itself was entered into within the Northern District of Florida."

Which reguest the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon, before the jury retired to consider of the verdict the defendants' counsel did request the Court to give to the jury the following special charge.

4. "If you find that a conspiracy was entered into between the defendants as charged in the indictment, outside of the Northern District of Florida, but that one or more of the defendants participated in the avert act in pursuance thereof, within the Northern District of Florida, you can find guilty only those defendants who participated in such overt act."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did request the Court to give to the jury the following special charge:

16. "The Court instructs the jury that the testimony of the witness, John A. Givens, as to what the defendant, Harlan, told him relative to one William Albert cannot be considered against the defendant in this case except the defendant, Harlan." 1109

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did request the Court to give to the jury the following special charge:

17. "The Court instructs the jury that the testimony of the witness, James Johnson, as to the acts and declarations of the defendant, Harlan, relative to one Joseph Borsoda and C. Krum cannot be considered as against any defendant in this case except the defedant, Harlan."

Which request the said judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon before the jury retired to consider their verdict the defendants' counsel did request the Court to give to the jury the following special charge:

18. "The Court instructs the jury that the testimony of the witness, C. H. Honeki, as to the message received by him from the defendant, Harlan, to execute warrants against one Joseph Borsoda cannot be considered as evidence against any defendant in this case except the defendant, Harlan."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon, before the jury retired to consider of their verdict the defendants' counsel did request the Court to give to the jury the following special charge:

19. "The Court instructs the jury that the testimony of the witness, Frank Dunkey, as to what the defendant, Harlan, said to one C. Krum in his presence, cannot be considered as evi-

dence against any defendant in this case except the defendant Harlan."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon before the jury retired to consider of their verdict, the defendants' counsel did request the Court to give to the jury the following special charge.

22. "The Court charges you that there is a variance between the charges contained in the indictment and the proof offered by the Government, in that it appears that the names of some of the persons who were the objects of the
1110 conspiracy were known to the grand jurors at the time of the finding of this indictment, and therefore you must find the defendants not guilty."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did request the Court to give to the jury the following special charge:

23. "The indictment charges a conspiracy to hold, to arrest, to return divers persons to the grand jurors unknown. If you find from the evidence that the names of some of the persons who were the objects of the conspiracy were known to the grand jurors at the time of the finding of this indictment, it will be your duty to find the defendants not guilty."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did request the Court to give to the jury the following special charge:

26. "The defendant, Newlander, requests the following charge:
You will find the defendant, Newlander, not guilty."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did request the Court to give to the jury the following special charge.

27. "The defendant, Harlan, requests the following charge: You will find the defendant, Harlan, not guilty."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did request the Court to give to the jury the following special charge:

28. "The defendant, Bellinger, requests the following charge:
You will find the defendant, Bellinger, not guilty."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict, the defendants' counsel did request the Court to give to the jury the following special charge:

1111 29. "The defendant Sandor requests the following charge:
You will find the defendant, Lamata, not guilty."

Which request the said Judge did then and there refuse, to which refusal the defendants counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did request the Court to give to the jury the following special charge:

30. "The defendant, Grace, requests the following charge:
"You will find the defendant, Grace, not guilty."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did request the Court to give to the jury the following special charge:

31. "The defendant, Halverson, requests the following charge:
You will find the defendant, Halverson, not guilty."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did request the Court to give to the jury the following special charge:
32. "The defendant, Gallagher, requests the following charge:
You will find the defendant, Gallagher, not guilty."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon, and before the jury retired to consider of their verdict the defendants' counsel did request the Court to give to the jury the following special charge.

33. "The defendant, Lamata, requests the following charge:
You will find the defendant, Lamata, not guilty."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did request the Court to give to the jury the following special charge:

34. "You cannot consider the acts and declarations of one Angelo for the purpose of determining the guilt or
1112 innocence of these defendants, or any of them."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did request the Court to give to the jury the following special instruction:

35. "You cannot consider the acts and declarations of Newlander for the purpose of determining the guilt or innocence of these defendants, or any of them except for the defendant, Newlander."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict, the defendants' counsel did request the Court to give to the jury the following special charge:

36. "You cannot consider the acts and declarations of Harlan for the purpose of determining the guilt or innocence of these defandants, or for any of them except the defendant, Harlan."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did request the Court to give to the jury the following special charge:

37. "You cannot consider the acts and declarations of Bellinger for the purpose of determining the guilt or innocence of these defendants, or any of them except the defendant, Bellinger."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict, the defendants' counsel did request the Court to give to the jury the following special charge:

38. "You cannot consider the acts and declarations of Sandor for the purpose of determining the guilt or innocence of these defandants, or any of them except the defendant, Sandor."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

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And thereupon and before the jury retired to consider of their verdict, the defendants' counsel did request the Court to give the jury the following special charge:

39. "You cannot consider the acts and declarations of Grace for the purpose of determining the guilt or innocence of these defendants, or any of them except the defendant, Grace."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did request the Court to give to the jury the following special charge:

40. "You cannot consider the acts and declarations of Halverson for the purpose of determining the guilt or innocence of these defendants, or any of them except the defendant, Halverson."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict, the defendants' counsel did request the Court to give to the jury the following special charge:

41. "You cannot consider the acts and declarations of Gallagher for the purpose of determining the guilt or innocence

of these defendants, or any of them, except the defendant, Gallagher."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And thereupon and before the jury retired to consider of their verdict the defendants' counsel did request the Court to give to the jury the following special charge:

42. "You cannot consider the acts and declarations of Lamata for the purpose of determining the guilt or innocence of these defendants, or any of them, except the defendant, Lamata."

Which request the said Judge did then and there refuse, to which refusal the defendants' counsel did then and there except.

And inasmuch as the said several matters objected to or insisted upon and considered by the Court do not appear by the record the said defendants did, on the 15th day of 1114 May, A. D. 1907, after the expiration of said term by virtue of a special order herein made, propose this, their bill of exceptions, to the said rulings of said Judge and request him to sign the same, which after due notice to the opposite party or his attorneys is done, this 25th day of May, A. D. 1907.

I do hereby certify that the foregoing bill of exceptions contains all the evidence introduced at the trial in the above stated cause and the whole charge of the Court given to the jury at said trial, and that it is necessary that the testimony be stated in the form of questions and answers in order to enable the Appellate Court to fully understand and weigh it.

CHAS. SWAYNE,
Judge of the United States District Court, Northern District of Florida.

(Indorsements:) United States of America. vs. W. S. Harlan, et al. Filed May 25th, 1907. F. W. Marsh, Clerk. Bill of Exceptions. The within Bill of Exceptions was this 15th day of May, 1907, presented for settlement and taken under consideration by the undersigned. Chas. Swayne, Judge.

And afterwards, to-wit: on the 15th day of May, A. D. 1907, came the said defendants, Robert Gallagher, Oscar Sandor and Walter E. Grace, and by their attorneys filed the following petition for appeal, to-wit:

In the United States District Court, Northern District of Florida.

United States of America
vs.
W. S. Harlan, Robert Gallagher, Oscar Sandor, E. Newlander,
C. C. Hilton, Jeb S. Howell, John Atwell, Walter
E. Grace, S. E. Huggins, Archie Bellinger,
Harry Halverson, one Angelo, one Lamater, alias Lameater.

Now come the defendants, Robert Gallagher, Oscar Sandor and Walter E. Grace, by their attorneys, and each pray the Court for an order authorizing and directing a writ of error to issue to this Court, returnable to the United States Circuit Court of Appeals for the Fifth Circuit, according to law.

W. W. FLOURNOY,
MAXWELL & REEVES,
Attorneys for Defendants.

(Indorsed:) It is ordered that appeal in the above stated case be allowed and that the writ of error issue as therein prayed. Done in Pensacola, Florida, May 15th, 1907. Chas. Swayne, Judge. United States of America vs. W. S. Harlan, et. al. Praecipe for Writ of Error. Filed May 15th, 1907. F. W. Marsh, Clerk.

And thereupon, on the day aforesaid, to-wit: on the 15th day of May, A. D. 1907, the said defendants filed their assignment of errors, which was in the words and figures following to-wit:

1116 In the United States Circuit Court, Northern District of Florida.

United States of America
vs.
W. S. Harlan, Robert Gallagher, Oscar Sandor, E. Newlander, O. C. Hilson, Jeb S. Howell, John Atwell, Walter E. Grace, S. E. Huggins, Archie Bellinger, Harry Halverson, one Angelo, one Lamata, alias Lameater.

The defendants, Robert Gallagher, Oscar Sandor and Walter E. Grace, each assign as errors in the Court below the following:

1. That Court erred in overruling the defendants' demurrer to the indictment.

2. The Court erred in refusing to grant the defendants' motion to strike and expunge from the indictment the words "or alleged to be indebted to the Jackson Lumber Company, a corporation," and also the allegation, "and did then and there wound, beat and ill-treat the said Trudices Mihaly, alias Trudich Mihaly."

3. The Court erred in granting the Government's motion to strike from the indictment the following:

"And afterwards, to-wit: on the twenty-fourth day of July, in the year of Our Lord, one thousand nine hundred and six, in pursuance of, and for the purpose of effecting the object of the said conspiracy, the said C. C. Hilton, the said Jebb S. Howell and the said S. E. Huggins did, by threats and force, within the district aforesaid, and within the jurisdiction of this Court, to-wit: in the County of Walton, State of Florida, arrest one Rudolph Lanninger, who had been before the time aforesaid, in the employ and was indebted to, or alleged to be indebted to the Jackson Lumber Company, a corporation, and who had quitted the employment aforesaid, while in debt to, or alleged to be in debt to the said Jackson Lumber Company,

and restrained him of his liberty, against his will and consent,
and compelled him, the said Rudolph Lanninger, to
1117 accompany them, the said C. C. Hilton, Jebb S. Howell and S. E. Huddins, to the place of business of the
said Jackson Lumber Company."

5. The Court erred in permitting the witness, John Smith, to testify over the objection of the defendants in answer to the question: "What were to be your wages," as follows, to-wit: "One dollar with board and one dollar and a half without board and ten hours a day."

6. The Court erred in permitting the witness, John Foster, to detail over the objection of the defendants of the conversation testified to between him and the defendant, Angelo, in the words to the effect following: "It was at the time the boys were running away and getting away from the camp, and I went out one evening and saw the guard and was talking to Angelo about it, and he says all houses not only guarded here, but they are guarded all over, even in Florala; they have got out people there to watch for any runaways they may be brought back from Florala or other parts. I says, yes, I says this looks pretty much like having a regular armed guard, and he knew that I had served in the ——— war, and he says I guess it reminds you of your army camp, and I says, yes, it does, and he says they have got the same orders, to shoot to kill."

7. The Court erred in overruling the defendants' motion to strike out the testimony of the witness, John Smith, as follows, to-wit:

"It was at the time the boys were running away and getting away from the camp, and I went out one evening and saw the guards and was talking to Angelo about it, and he says all houses not only guarded here, but they are guarded all over, even in Florala; they have got out people there to watch for any runaways that may be brought back from Florala or
other parts. I says, yes; I says this looks pretty much
1118 like having a regular armed guard, and he knew that
I had served in the ——— war, and he says I guess
it reminds you of your army camp, and I says, yes, it does and he says they have got the same orders, to shoot to kill."

8. The Court erred in refusing to grant the motion of the defendants to strike the testimony of the witness Arthur Buck-

ley, to the effect that the defendant, Archie Bellinger, was chasing the witness and endeavoring to prevent him from having a conversation with ————, designated by the witness as the "consul," and to the effect that the defendant, Lamater, had endeavored to prevent the witness from having a conversation with the "consul," and to the effect that the defendant, Newlander, took the witness away and endeavored to prevent him from having a conversation with the "consul."

9. The Court erred in permitting the witness, Jordsman, to testify that the defendant, Gallagher, come to him, the witness, with a revolver and beat him, and that Gallagher put him, witness, on the ground and beat him and kicked him on his feet and legs.

10. The Court erred in permitting the following questions to be propounded to the witness, Charles Haas, and the answers thereto over the objection of the defendants as follows, to-wit:

Q. Who carried you back to the car?
A. Two sheriffs.
Q. Did they stop you—were you going away when you were stopped by them?
A. Yes, sir; we were sitting down and there come a man, two men in a wagon, and one come down and says I want you to go with me, and we says, yes, sir, we will go.
Q. Did the sheriffs have any guns?
A. Yes, sir; two guns—one sheriff had two guns.

1119 11. The Court erred in permitting the witness, Craig, to testify over the objection of the defendants as to the conversation between witness and the defendant, Gallagher, as follows, to-wit:

"I walked up to his buggy and spoke to him and told him that I understood the old man over there was a little bit excited about the incident said to have taken place. Mr. Paul I heard he was mad and I thought I would tell him about it. He had better look out and the old man was talking about making some trouble. Gallagher didn't say anything—he smiled and changed the subject and went on talking."

12. The Court erred in permitting the Government's counsel to require the defendant, Newlander, to stand up in order

that the defendant. Newlander, might be identified by the witness, Trudich Mihaly.

13. The Court erred in commenting upon the defendants' objection to the requirement of the defendant, Newlander, to stand up for identification by the witness Mihaly in the following language, to-wit:

"I did not see what he was doing that might or might not be pertinent. I saw a condition yesterday when that remark would have been very applicable; one of the defendants was doing just that thing when he was called for. I won't say which one it was, but I noticed it, particularly, but I didn't notice it at this time, and therefore do not know whether it was applicable or not."

14. The Court erred in replying to the exception of the defendants to the last above quoted remarks of the Judge in the following language, to-wit:

"The Court repeats that on yesterday, when one of the defendants was called for, in the judgment of the Court he tried to hide behind another defendant, with his head way down, and the witness was looking for him, and the Court was looking straight at him and saw it; and said remark would have then been proper. I do not know what happened now.
1120 Proceed."

15. The Court erred in permitting the witness, Trudich Mihaly to testify that Mr. Miller and Mr. Newlander told him, witness, in the office of Miller & Frank in New York, that $3.00 would be deduced every month from salary of witness if he stayed with the Jackson Lumber Company for six months, after which the $18.00 passage money would be refunded to him.

16. The Court erred in permitting the witness, Trudich Mihaly to testify over the objection of the defendants that the defendant, Newlander, told him, witness, that they, the witness and Newlander, should run away to New York and that he, witness, would not do it; that Mr. Newlander told the witness they might get into trouble here and it would be better if they would go back to New York.

17. The Court erred in permitting the witness, Dunkey,

to testify over the objection of the defendants as to the contents of a paper furnished by the defendant, Sandor, to the witness, Dunkey, and one Otto Garrey, which paper the witness designated as a passport, the contents of which was stated by the witness to be as follows: "Deputy Sheriff. Please let these two go."

18. The Court erred in admitting in evidence over the objection of the defendant the instrument purporting to be a telegram in the words and figures following, to-wit:

Laurel Hill, Florida.
W. S. Harlan, Lockhart, Alabama.
Two foreigners here from your camp—shall I stop them?"
(Signed) "JOHN ATWELL,"
"Deputy Sheriff."

19. The Court erred in permitting the witness, John Atwell, to testify over the objection of the defendants as to the purport of a telegram received by the witness from Lockhart in reply to a telegram sent by the witness to W. S. Harlan, as to the purport of which the witness testified as follows: "I think it said to hold these two men, stop them."

1121

20. The Court erred in overruling the objection of the defendants to the following question propounded to the witness, Barlow:

"Well, what is the matter with your recollection? Do you know—just tell us now whether or not you heard these bosses, any of these men who were bosses, around there, foreman of gangs, these men whom you recognized in general conversation at any particular time, but that it was generally understood from them that these men were not allowed to leave there because they owed for transportation."

21. The Court erred in overruling the defendants' objection to the following question propounded to the witness, Barlow, by the United States District Attorney:

"Well, what is the matter with your recollection? Do you know—just tell us now whether or not you heard these bosses, any of these men who were bosses, around there, foremen of gangs, these men whom you recognized in general conversation at any particular time, but that it was generally understood from them that these men were not allowed to leave there because they owed for transportation."

22. The Court erred in permitting the witness, Atwell, over the objection of the defendants to testify as follows: "I think that was what it was understood to work out the transportation.

23. The Court erred in overruling the motion of the defendants to strike out the answer of the witness, Barlow, as follows:

"I think that was what it was understood—to work out the transportation."

"Well, what is the matter with your recollection? Do you know—just tell us now whether or not you heard these bosses, any of these men who were bosses, around there, foreman of gangs, these men whom you recognized in general conversation at any particular time, but that it was generally understood from them that these men were not allowed to leave
1122 because they owed for transportation."

24. The Court erred in permitting the witness, Barlow, over the objection of the defendant to answer the following question propounded by the District Attorney:

"Well, now, did you not tell Mr. Reese in the presence of Mr. Caldwell that you had heard Mr. Gallagher say that the reason they gave these orders, and why they were keeping there men there, was that they wanted them to work out their tranportation."

25. The Court erred in admitting in evidence over the objection of the defendants the original record and papers filed in the Justice of the Peace's Court in and for Justice District at Florala, and identified by the witness, James Johnson, a Justice of the Peace in and for said Justice District.

26. The Court erred in admitting in evidence over the objection of the defendants, the paper in the words and figures following, to-wit:

The State of Alabama,
Covington County.

Before me, James Johnson, a Justice of the Peace in and for said county, personally appeared W. S. Harlan, who being first duly sworn, deposes and says on oath that in said county on or about the 5th day of August, 1906, one Joseph Barsoda did obtain money by making false statements and also did obtain blankets and other merchandise from the store of the Jackson Lumber Company, at Lockhart, Alabama, against the peace and dignity of the State of Alabama.

(In Lead Pencil) W. S. HARLAN.
(In Ink) W. S. HARLAN.

1123 Sworn to and subscribed before me, this the 15th day of August, 1906.

JAMES JOHNSON, J. P."

27. The Court erred in overruling the motion of the defendants to strike out the testimony of the witness, James Johnson, that one, Barsoda charged before him as Justice of the Peace, was obtaining property under false pretences was discharged under said charge as they failed to make out a case against him.

28. The Court erred in permitting the witness, James Johnson over the objection of the defendants to read from his Justice of the Peace's docket, the following entries.

The State,
vs.
C. Krum.

States Witnesses: W. H. Boring and W. S. Harlan.

Charge: Emigrant leaving service without paying back advances. Code Sec. 5510.

August 9th 1906: Affidavit made by W. S. Harlan and warrant issued and executed by C. H. Moneke, constable.

August 10, 1906: This day this case was called for preliminary trial, and the defendant, C. Krum, being in Court, and for his plea to said charge, says that he is guilty. The Court after the examination of the witnesses for the state finds that there is probable cause to believe the defendant guilty, and fixes his bond in the sum of one hundred dollars, and on his failure to make said bond was committed to jail."

And to testimony referred thereto as follows:

"Yes, sir; but never taken him to jail. They locked him up in the town prison.

This was on the 10th, and on the 13th, 1906, there was this entry: "This day came the prosecutor, W. S. Harlan, and withdrew the prosecution and paid all costs in said cause."

1124 29. The Court erred in permitting the witness, James Johnson, to testify over the objection of the defendant as to the contents of a contract entered into between the defendant and one, Krum about the time of the payment by the defendant, Harlan, of the costs on a certain cause pending in the Justice of the Peace's Court in the State of Alabama, wherein the State of Alabama was prosecuting, and the said Krum was defendant, that in substance Krum agreed to go back and work out the indebtedness he had been arrested for at the rate of $1.35 a day.

30. The Court erred in permitting the witness, R. P. Reese to testify over the objection of the defendants as to a conversation between him the defendant, Harlan, as to the service upon him of a duces tecum, for certain books and papers of the Jackson Lumber Company, and as to certain contracts called for by said duces tecum, saying in substance that said Harlan told witness that the subpoena duces tecum had been served on the book-keeper, Porter, but he protested against bringing the bulky books from the office, but had statements of accounts wanting and also the contract called for, and will produce that if advised at the proper time.

31. The Court erred in permitting the witness, James Johnson over the objection of the defendant to read in evidence the paper in the words and figures following, to-wit:

"The State of Alabama,
Covington County.

Before me, James Johnson, a Justice of the Peace in and for said county, personally appeared Robert Gallagher, who being first duly sworn, deposes and says on oath that in said county on or about .... one, William Albert procured money from him under false pretense with intent to defraud him, and has good cause to believe and does

1125 believe that William Albert is guilty of obtaining money under false pretense against the peace and dignity of the State of Alabama.

ROBERT GALLAGHER.

Sworn to and subscribed before me, this 17th day of July, 1906.

JAMES JOHNSON, J. P.

32. The Court erred in permitting the witness, James Johnson to testify over the objection of the defendants of the acts, transactions and conversations between the defendant [defendants], Gallagher and William Albert, in reference to a cause pending in the Justice of the Peace's Court in the State of Alabama in reference to a certain cause therein pending, wherein the State of Alabama was prosecuting and the said William Albert was defendant.

33. The Court erred in permitting the government over the objection of the defendant to contradict by the witness, James Johnson, the government's witness, Moneke, who had testified that he didn't sign a certain affidavit.

34. The Court erred in making the following remark before the jury in reference to the witness, Moneke.

"I do not want to comment at any length upon that witness, but want to hear as little as I can about him."

35. The Court erred in admitting in evidence over the objection of the defendants, the letter purporting to have been written to the editor of the Pensacola Journal, at Pensacola, Florida, and bearing date, Lockhart, Ala., July 24, 1906.

36. The Court erred in refusing, upon the objection of the United States District Attorney, to permit the witness, Givens, to answer the following question propounded by the attorneys of the defendants. "Is it not a custom among mill men and turpentine operators not to employ employees of another concern when those employees are indebted, without first paying what they owe."

1126 37. The Court erred in refusing upon the objection of the United States District Attorney, the witness, Givens, to answer the following question propounded to the witness by the attorney of the defendants, to-wit:

"Was there or not an understanding between your concern and the Jackson Lumber Company, that you would not employ each others employees when those employees had abandoned the service of the other while indebted to them without first paying off that indebtedness?"

38. The Court erred in refusing, upon the objection by the United States District Attorney to permit the witness, Givens to answer the following question propounded by the attorney of the defendants, to-wit: "Was it anything unusual in a communication of this kind to notify a man that he had one of his employees, and that, if the amount he owed there was paid he might take him?"

39. The Court erred in refusing to permit the witness, Givens to explain why he refused to take William Albert out of jail at the time of his commitment by the witness, James Johnson, acting as Justice of the Peace.

40. The Court erred in refusing to permit the witness, Givens to testify to the habits and character of William Albert.

41. The Court erred in refusing to allow the witness, Givens to answer the following question propounded by the attorney of the defendants, to-wit: "What kind of a man was this Albert?"

42. The Court erred in refusing the motion of the defendants for an affirmative charge in favor of the defendants upon the ground that there existed a variance between the proof and the indictment.

43. The Court erred in refusing to permit the witness, Hall to answer the following question propounded by the attorney for the defendants, to-wit: "State to the jury how the accommodations were at that camp?"

1127 44. The Court erred in overruling the defendant's objection to the question propounded by the government to the witness, William Edge, as follows, to-wit: "Now, I will ask you this question which does not need any predicate. Have you not stated to others that the reason you left there was on account of the treatment of the men by these bosses?"

45. The Court erred in overruling the defendant's objection to the question propounded by the government to the witness, Charles Haafmer, as follows: "When did you come down here to Court; you was not in town here week before last?" To which the witness replied, "No, sir; I came down here yesterday."

46. The Court erred in overruling the defendant's objection to the question propounded by the government to the witness, William F. Reed, Jr., as follows, to-wit: "If the sun is not obscured, if it is a cloudless sky, how long is twilight after the sunset in this latitude?" to which the witness answered, "From twenty to thirty minutes."

47. The Court erred in overruling the defendant's objection to the question propounded by the government to the witness, M. A. Gordon, as follows, to-wit: "Now, have you been requested or directed by Gallagere or Bellinger or any of the defendants to intercede with anybody to make any kick to intercede with anybody who had made a kick about the way a man was carried back there?"

48. The Court erred in overruling the defendant's objection to the question propounded by the government to the witness, J. T. Manning, as follows, to-wit: "Do you know whether he (referring to the defendant, Harlan), has had bloodhounds in the last year, and kept them there for that purpose?"

1128 49. The Court erred in overruling the defendant's objection to the question propounded by the government to the witness, R. S. Cory, as follows, to-wit: "Outside of the papers, now, what was in the air since the middle of July, current all around there talked and discussed around people generally about these foreigners being brought down there—about their proclivities for working—have you not heard it discussed?"

50. The Court erred in overruling the defendant's objection to the question propounded by the government to the witness, Emil Lesser, as follows, to-wit: "What did you do with that white-wash report when you made it out?" referring to a

report made by witness as to conditions at the Jackson Lumber Co. plant made after investigation.

51. The Court erred in sustaining the objection of the government to the question propounded by the defendant to the witness, as follows: "Do you know of your own knowledge or from general reports about there, what kind of men these were—these foreigners that were brought in there?"

52. The Court erred in sustaining the objection of the government to the question propounded by the defendants to the witness, F. D. Saunders, as follows, to-wit: "What was he (meaning, Max Schont), in there (meaning the county jail) for?"

53. The Court erred in sustaining the government's objection to the question propounded by the defendant to the witness, F. D. Saunders, as follows, to-wit: "Was or was not McGinnis placed in jail under a charge of larceny?"

54. The Court erred in sustaining the government's objection to the question propounded by the defendants to the witness, F. D. Saunders, as follows, to-wit: "Is or is he not (referring to McGinnis) now within the reach of this
1129 Court?"

55. The Court erred in sustaining the government's objection to the question propounded by the defendants to the witness, F. D. Saunders, as follows, to-wit: "Was or was not Max Schonts put in the county jail here in Pensacola, under a charge of grand larceny since the 23rd day of July, A. D. 1906?"

56. The Court erred in sustaining the objection of the government to the question propounded to the defendants to the witness, F. D. Saunders, as follows, to-wit: "Is or is not Max Schont now in jail?"

57. The Court erred in sustaining the government's objection to the question propounded by the defendants to the witness, F. D. Saunders, as follows, to-wit: "Did or did not Max Schont since the 23rd day of July, A. D. 1906, plead guilty in the Criminal Court of record of this county, to the charge of grand larceny?"

58. The Court erred in sustaining the government's objection to the question propounded by the defendants to the witness, F. D. Saunders, as follows, to-wit: "Do you know whether Max Schont is now within the jurisdiction of this Court?"

59. The Court erred in refusing to permit the defendants to show that the same acts, facts and transactions relied upon by the government for a conviction in the case at bar are one and the same identical facts, acts and transactions offered in evidence by the government, and at the trial of the defendants, W. S. Harlan, S. E. Huggins, C. C. Hilton and Jeb S. Howell begun on the 14th day of November, and concluded on the 23rd day of November, A. D. 1907, under an indictment charging the said persons with a conspiracy to arrest, return and hold certain persons named in that indictment, and also named in the indictment in the case at bar to a condition of peonage.

1130 60. The Court erred in sustaining the government's objection to the reading in evidence by the defendant, W. S. Harlan communications in his possession showing that he, Harlan, had stipulated fully and in detail what the employees were to do and requested the agency securing men to make the man fully understand what they were to be employed at.

61. The Court erred in sustaining the government's objection to the question propounded by the defendant's counsel to the defendant, W. S. Harlan, as follows, to-wit: "What were your motives in bringing these laborers here?"

62. The Court erred in overruling the defendant's objection to the following question propounded by the counsel for the government, as follows, to-wit: "Now, what did his (meaning Krum) contract call for after you took him out of jail?" referring to a written contract between the parties, the contents of which the witness proceeded to state.

63. The Court erred in overruling the defendant's objection to the following question propounded by the United States District Attorney to the defendant, W. S. Harlan, as follows, to-wit: "You do not know whether there were any officers there at that time?"

64. The Court erred in making the following remark in

disparagement of the testimony of the defendant, Robert Gallagher, to-wit: "The Court thinks he has finally come to something that is pertinent, he has been to Canada and all over the country, but he has at last gotten down now to where he ought to have started?"

65. The Court erred in sustaining the objection of the United States District Attorney, as follows, to-wit: "I understood you to say on yesterday that you found that the report in the newspaper was untrue, did you make a report
1131 like this from the investigation?"

66. The Court erred in sustaining the government's objection to the question propounded by the defendants to the witness, Sheehan, as follows, to-wit: I will ask you this question, did you not on that report state that you found the testimony of the witness before the Court to be true?"

67. The Court erred in refusing to grant the defendant's motion to strike out the testimony of the witness, Sheehan, as follows, to-wit: "The truth will be had. The charges against the Jackson Lumber Company are in the Courts, where the workmen who make the charges and the company officers who deny them, will each have a day. In the meanwhile a thorough investigation made on behalf of the Advertiser has convinced me that while some of the accounts of the harsh treatment received by the men are true, that many of the sensational statements they made to the Court and to the Pensacola newspaper are not true. I believe that men fleeing from Alabama have been captured and brought back to Alabama. If this is established in the Courts, such acts will be declared illegal. Employees of the company admit that in at least one instance this was done. Citizens of Laurel Hill six miles in Florida from the Jackson Lumber Company's logging camp, assert that it has been done a half dozen or more times. They say this in conversation, but whether they will be willing to say so in Court remains to be seen."

68. The Court erred in permitting the witness, Mrs. Paul, over the objection of the defendants to testify that the reputation of the defendant, Gallagher, in and around Laurel Hill was that he was hunting men and made them work.

1132 69. The Court erred in overruling the objection of the defendant to the following question propounded to the witness, R. A. French, to-wit: "Now, what is the general rumor and talk around Florala and the adjoining community as to these parties, the treatment that these men have given their laborers in the camp?"

70. The Court erred in overruling the objection of the defendants to the following question propounded to the witness, Danish, to-wit: "Ask him if Mr. Newlander tried to get him to go to New York and not to be a witness here?"

71. The Court erred in denying the motion of defendants to strike from the testimony of the witness, Danish with respect to the acts and conduct of Newlander in trying to get the witness to go away.

72. The Court erred in sustaining the statement of the government's counsel to the following question propounded to the witness, Danish, to-wit: "Was not Coleman Danish your brother?"

73. The Court erred in sustaining the objection of the government's counsel to the following question propounded to the witness,, Danish, to-wit: "Do you know whether Lessor had been out there before you left or not?"

74. The Court erred in overruling the objection of the defendants to the following question propounded to the witness, Mihaly, to-wit: "What did Mr. Newlander say to you about going to New York?"

75. The Court erred in overruling the objection of the defendants to the witness, Mihaly, "You say you talked very reluctantly?"

76. The Court erred in denying motion of defendants to strike the answer of the witness, Mihaly. "I think he did," given in reply to the question, "Did you know whether or not he wrote out anything that you had to say?"

1133 77. The Court erred in overruling the objection of the defendants to the question to the witness, Rafford asking as to the general reputation of the Jackson Lumber Co. in its treatment of its employees during July, to which the witness answered it was kind of bad, abusing and whipping them.

78. The Court erred in denying the motion of the defendants to strike the testimony of the witness, Buckley, that Bellinger was trying to keep the witness from seeing the "counsel," and to prevent witness from telling that Bellinger whipped him.

79. The Court erred in denying the motion of defendants to strike the testimony of the witness, Craig, as to the reputation of Gallagher and Bellinger and Big Harry, as to their treatment of the men being bad.

80. The Court erred in overruling the objection of the defendants to the testimony of F. W. Marsh as to the conversation of witness, Dr. Lessor, with reference to the Mihaly case.

81. The Court erred in denying the motion of the defendants to strike the testimony of the witness, Marsh, as to his interview with Dr. Lessor.

82. The Court erred in overruling the objection of the defendants to the following question propounded to the witness, Marsh. "Have you heard their testimony on this trial, is there any difference or substantial difference of their testimoney at this trial and their testimony given before you at that time?"

83. The Court erred in denying the motion of defendants to strike the testimony of the witness, Marsh, that the men who made complaints before him did not come in a body.

84. The Court erred in overruling the objection of defendants to the question of the witness, Marsh, asking how those making complaints before him did come, to which witness answered that he did not recall that more than two came before him at any one time originally.

1134 85. The Court erred in overruling the objection of defendants to the following question propounded to the witness, Marsh:

"Do you know whether as a matter of fact, Mr. Lessor's report of his investigation at the Lockhart camps was published before your finding in the investigation you were holding in July and August," to which witness replied as stated in the next assignment.

86. The Court erred in denying motion of defendants to strike the following statement of the witness, Marsh: "I do not know the date of the publication of his official report; I only know the day of the publication of what purported interviews of his in the papers, and that preceded the final hearing here on August third.

87. The Court erred in overruling the objection of defendants to the following question propounded to the witness, Harry Brown: "Did you make any statement in reference to being a witness for Mr. Gallagher to me?"

88. The Court erred in denying the motion of defendants to strike the testimony on direct examination of the witness, Frank Dunkey, to the effect that defendant, Sandor, said to him when he heard he was going to Pensacola, that he was not to think that he was going to be a witness, and advised him to go to Montgomery.

89. The Court erred in denying the request of defendants to be allowed to cross-examine the witness, Satterwhite, before he should be permitted to testify as to the reputation of Gallagher and Grace, about Lockhart.

90. The Court erred in sustaining the objection of the government to the following question propounded to W. S. Harlan: "What is the length of those blocks?"

1135 91. The Court erred in sustaining the objection of the government to the following question propounded to the witness, Craig: "Do you know her general reputation in the community in which she lives for chastity?"

92. The action of the Court in giving the following charge to the jury:

"It if [is] not necessary that each of the parties should in person commit the unlawful act or that they should be present, or even in the jurisdiction of this Court at the time of the commission of the overt act; if it is fairly within the contemplation of their agreement that the overt act was to be done by one or more of the associates within the jurisdiction of this Court; then the overt act of one is the act of all, and renders all the associates indictable within this jurisdiction, if any overt act was committed herein?"

93. The action of the Court in giving the following charge to the jury:

"The offense of conspiracy under the laws of the United States is sufficiently proved if the jury us [is] satisfied from the evidence in this case that two or more of the defendants indicted entered into an agreement to accomplish the design of arresting and returning divers persons as above described to a condition of peonage, and, if the evidence shown such design was arrived at by a tacit understanding which was followed by some act done by one or all the parties charged in the indictment in furtherance of that agreement; the joint assent of all may be proved by direct testimony or may be inferred from facts which will satisfy the jury."

94. The action of the Court in giving the following charge to the jury:

"You could not consider evidence of acts and facts not directly connected with the conspiracy in the indictment as raising any presumption that, because other wholly dis-
1136 connected things were done by the defendants there-
fore the defendants were capable of and for that reason actually did what is charged in the indictment. But on the other hand, if you believe from the evidence not directly concerning the conspiracy to arrest these divers persons, that a general system of business existed at the time of their arrest at and about the Lockhart camps, with the knowledge and cooperation of these defendants, or any two of them, involving an understanding between them or any such two of them, that such and such things were to be done as occasion might arise, as part of such system of business and that such system included the intimidating and chasing and returning of foreign and other employees in order to make them work out their indebtedness to the Jackson Lumber Company, and you believe that these divers persons were arrested with intent to return them to work out such indebtedness to said company, then you have a right to conclude that there was an understanding between such two or more defendants to arrest these divers persons, as charged in the indictment. In other words, proof of a general existing understanding that any indebted foreign workmen of the company, that is, workmen recently arriving from New York, who should run away should be pursued and arrested in order to be returned to work out the indebtedness, would be proof of the alleged conspiracy to arrest these divers

persons described in the said indictment for the same purpose. Although, you believe that one of the alleged conspirators may never have known of the existence of the persons described in the indictment, yet, if he participated in such a general understanding as stated, he would be guilty of the conspiracy to arrest these divers persons before described."

1137 95. The action of the Court in giving the following charge to the jury:

"There is a class of testimony that has been admitted for your consideration, tending to show other unlawful acts of like character to those charged in this indictment, committed by one or more of the defendants at or near the time of the alleged formation of the conspiracy charged in this indictment. Of this class the evidence relating to the transactions between Gallagher and certain of the witnesses at Fort Valley; the arrest of Willia [William] Albert, C. Kruk and Joseph Barsoda, and circumstances attending these transactions are illustrations. Acts of the defendant prior or subsequent to the alleged offense which logically tend to prove the criminal intent or guilty knowledge, is admissible, and may be considered by you and likewise where the crime in question is one of a system of criminal acts, occurring so near together in point of time and so nearly similar in means as to lead to the logical inference that they are mutually dependent, and committed in pursuance of the same deliberate criminal purpose, and by means planned before hand, evidence of such acts is admissible, even, though these acts amount to another criminal offense. But such evidence is not admissible for the purpose of proving that defendants committed the crime charged against them in this indictment, but to show their purpose, plan, intent or knowledge, or to show that the acts charged against them were not the result of accident, mistake or inadvertance or to rebut a defense which would otherwise be open to the accused."

96. The action of the Court in giving the following charge to the jury:

"Where a conspiracy occurs in a foreign jurisdiction, and one or more of the conspirators comes in person into this district and within the jurisdiction of this Court, and here in pursuance of such conspiracy does the overt act charged the

indictment under which he is being tried, but such
1138 transaction such conspiracy is renewed within this
district, and this Court would have cognizance of such
crime of conspiracy."

97. The action of the Court in giving the following charge to the jury:

"In considering the William Albert, Joseph Barsoda and C. Krum, incidents you are charged that you are to be governed by the following principals of law applicable thereto:

If a master or employer procures the arrest of a servant who has deserted while indebted to his employer with the intent of producing on the mind of the servant a condition which leaves him no choice but to return to his employment or suffer criminal prosecution and incarceration, and the prosecution is instituted for the express purpose of inducing the servant to return against his free will, and the jury is convinced that the motive of the master in procuring the arrest of the servant was for the purpose of compelling him to return to work out the debt, such master would be guilty of the crime denounced by the statute against peonage.

The result of the proceedings to arrest may be of two kinds. First, after the arrest and before trial, the servant at the solicitation of the master, may return to the service, the officer permitting the dismissal of the charge; or, second, there may be some form of trial, a nominal or substantial fine imposed, which the master pays, and adds to the indebtedness of the servant, and returns the servant to the employment. But it makes little difference what outward form the proceedings may take, if the intention of the master is illegal, as already described, he would be guilty of the crime denounced by the statute."

1139 98. The refusal of the Court to give the following charge requested by the defendants:

"Under the evidence in this case you will find the defendants not guilty."

99. The refusal of the Court to give the following charge requested by the defendants.

"Before you can find the defendants guilty under this indictment, you must find beyond a reasonable doubt that the conspiracy charged was entered into within the northern district of Florida."

100. The refusal of the Court to give the following charge requested by the defendants.

"It will not be sufficient to prove that overt act or acts in pursuance of the conspiracy was committed within the northern district of Florida, but you must find that the conspiracy itself was entered into within the northern district of Florida."

101. The refusal of the Court to give the following charge requested by the defendants.

"If you find that a conspiracy was entered into between the defendants as charged in the indictment, outside of the northern district of Florida, but that one or more of the defendants participated in the overt act in pursuance thereof, within the northern district of Florida, you can find guilty only those defendants who participated in such overt act."

102. The refusal of the Court to give the following charge requested by the defendants.

"The Court instructs the jury that the testimony of the witness, John A. Givens as to what the defendant, Harlan, told him relative to one William Albert cannot be considered against any defendant in this case, except the defendant, Harlan."

1140 103. The refusal of the Court to give the following charge requested by the defendants:

"The Court instructs the jury that the testimony of the witness, James Johnsan, as to the acts and declarations of the defendant, Harlan, relative to one, Joseph Barsoda and C. Krum, cannot be considered as against any defendant in this case, except the defendant, Harlan."

104. The refusal of the Court to give the following charge requested by the defendants.

"The Court instructs the jury that the testimony of the witness, C. H. Moneki, as to the message received by him from defendant, Harlan, to execute warrant against one Joseph

Barsoda, cannot be considered as evidence against any defendant in this case, except the defendant, Harlan."

105. The refusal of the Court to give the following charge requested by the defendants:

"The Court instructs the jury that the testimony of the witness, Frank Dunkey, as to what the defendant, Harlan, said to one C. Krum, in his presence, cannot be considered as evidence against any defendant in this case except the defendant, Harlan."

106. The refusal of the Court to give the following charge requested by the defendants.

"The Court charges you that there is a variance between the charge contained in the indictment and the proof offered by the government, in that it appears that the names of some of the persons who were the objects of the conspiracy were known to the grand jurors at the time of the finding of this indictment and, therefore, you must find the defendant not guilty."

1141 107. The refusal of the Court to give the following charge requested by the defendants:

"The indictment charges a conspiracy to hold, to arrest, to return divers persons to the grand jurors unknown. If you find from the evidence that the names of some of the persons who were the objects of the conspiracy were known to the grand jurors at the time of the finding of this indictment, it will be your duty to find the defendants not guilty."

108. The refusal of the Court to give the following charge requested by the defendant, Sandor:

"You will find the defendant, Sandor, nor guilty."

109. The refusal of the Court to give the following charge

requested by the defendant, Grace:
"You will find the defendant, Grace, not guilty."

110. The refusal of the Court to give the following charge requested by the defendant, Gallagher:

"You will find the defendant, Gallagher, not guilty."

111. The refusal of the Court to give the following charge requested by the defendants:

"You cannot consider the acts and declarations of Angelo for the purpose of determining the guilt or innocence of these defendants, or any of them."

112. The refusal of the Court to give the following charge requested by the defendants.

"You cannot consider the acts and declarations of Newlander for the purpose of determining the guilt or innocence of these defedants or any of them, except the defendant, Newlander."

1142 113. The refusal of the Court to give the following charge requested by the defendants:

"You cannot consider the acts and declarations of Harlan for the purpose of determining the guilt or innocence of these defendants or for any of them, except the defendant, Harlan."

114. The refusal of the Court to give the following charge requested by the defendants.

"You cannot consider the acts and declarations of Bellinger for the purpose of determining the guilt of innocence of these defendants or any of them, except the defendant, Bellinger."

115. The refusal of the Court to give the following charge requested by the defendants:

"You cannot consider the acts and declarations of Sandor for the purpose of determining guilt or innocence of these defendants or any of them, except the defendant, Sandor."

116. The refusal of the Court to give the following charge requested by the defendants.

"You cannot consider the acts and declarations of Grace for the purpose of determining the guilt or innocence of these defendants or any of them, except the defendant, Grace."

117. The refusal of the Court to give the following charge requested by the defendants:

"You cannot consider the acts and declarations of Helverson for the purpose of determining the guilt of [or] innocence of these defendants or any of them, except the defendant, Helverson."

118. The refusal of the Court to give the following charge requested by the defendants:

"You cannot considered [consider] the acts and declarations of Gallagher for the purpose of determining the guilt of [or] innocence of these defendants or any of them(except the defendant, Gallagher."

1143 119. The refusal of the Court to give the following charge requested by the defendants:

"You cannot considered [consider] the acts and declarations of Lamata for the purpose of determining the guilt or innocence of these defendants or any of them, except the defendant, Lamata."

W. W. FLOURNOY,
MAXWELL & REEVES,
Attorneys for Defendants.

Indorsed: United States of America, vs. W. S. Harlan, et al. Assignment of Errors. Filed May 15th, 1907. F. W. Marsh, Clerk.

And, thereupon, on the same day, to-wit, on the 15th day of May, A. D. 1907, the Court made and caused to be entered of record an order granting a supersedeas and stay of said sentence, which order is entered upon the minutes of said Court, and is in words and figures following, to-wit:

1144 INDICTMENT VIOLATION SECTION 5440 & 5526, R. S. U. S.

In the Circuit Court of the United States, in and for the Northern District of Florida, and the Fifth Judicial Circuit.

The United States,
vs. No. 590.
Robert Gallagher.

The defendant in the above entitled cause having this day filed a petition for an appeal and assignment of errors, and has caused to be sued out and duly served a writ of error to the Circuit Court of Appeals of the United States for the Fifth Judicial Circuit; and the Court having made and entered an order allowing said appeal, and granting a citation directed to the United States, and the defendant having presented for approval a supersedeas bond in the sum of three thousand ($3,000.00) dollars, with R. H. Trammell, J. E. Hughes and W. H. Britton as sureties, which supersedeas bond has been approved this day.

It is now ordered and adjudged that the said appeal do operate as a supersedeas to the judgment heretofore rendered in this cause on the fourteenth day of December, A. D. 1906, and the said sentence is hereby stayed until the determination of said appeal and the further order of the said Circuit Court of Appeals to be made herein.

Done and ordered in open Court, at Pensacola, Florida, this 15th day of May, A. D. 1907.

CHAS. SWAYNE, Judge.

Indorsed: United States, vs. Robert Gallagher and Walter E. Grace. Order Granting Supersedeas. Filed May 15th, 1907. F. W. Marsh, Clerk.

In the Circuit Court of the United States, in and for the Northern District of Florida, and the Fifth Judicial Circuit.

The United States,
vs. No. 590.
Walter E. Grace.

The defendant in the above entitled cause having this day filed a petition for an appeal and assignment of errors, and has caused to be sued out and duly served a writ of error to the Circuit Court of Appeals of the United States for the Fifth Judicial Circuit; and the Court having made and entered an order allowing said appeal, and granting a citation directed to the United States, and the defendant having presented for approval a supersedeas bond in the sum of three thousand ($3,000.00) dollars, with R. H. Trammell, J. E. Hughes and W. H. Britton as sureties, which supersedeas bond has been approved this day.

It is now ordered and adjudged that the said appeal do operate as a supersedeas to the judgment heretofore rendered in this cause on the fourteenth day of December, A. D. 1906, and the said sentence is hereby stayed until the determination of said appeal and the further order of the said Circuit Court of Appeals to be made herein.

Done and ordered in open Court, at Pensacola, Florida, this 15th day of May, A. D. 1907.

CHAS. SWAYNE, Judge.

Indorsed: United States, vs. Robert Gallagher and Walter E. Grace. Order Granting Supercedeas. Filed May 15th, 1907. F. W. Marsh, Clerk.

1146 And, thereupon, on the same day, to-wit, on the fifteenth day of May, A. D. 1907, the said defendants caused to be filed and duly approved their supersedeas bond, which is in the words and figures following, to-wit:

Know all men by these presents, That we, Robert Gallagher, as principal, and R. H. Trammell, J. E. Hughes and W. H. Britton, as sureties, are held and firmly bound unto the United States of America, in the full and just sum of three thousand ($3,000.00) dollars to be paid to the United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 15th day of May, in the year of our Lord, one thousand, nine hundred and seven.

Whereas, lately at the term, to-wit, the March adjourned term, held in the months of November and December, A. D. 1906, of the Circuit Court of the United States in and for the Northern District of Florida, in a suit pending in said Court, between the United States of America, plaintiff, and Robert Gallagher, Oscar Sandor and Walter E. Grace, and others defendants, a judgment and sentence was rendered against the said Robert Gallagher, and the said Robert Gallagher has obtained a writ of error from the United States Circuit Court of Appeals for the Fifth Circuit to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Fifth Circuit, at the City of New Orleans, Louisiana, thirty days from and after the date of said citation, which citation has been duly served.

Now, the condition of the above obligation is such, that, if the said Robert Gallagher shall appear in the said United States Circuit Court of Appeals, for the Fifth Circuit, on the first day of the next term thereof, to be held at the City of New Orleans, Louisiana, on the third Monday of November, A. D. 1907, and from day to day thereafter during said term, and from term to term, and from time to time until finally discharged therefrom, and shall abide by and obey all orders made by the said United States Circuit Court of Appeals, for the Fifth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from, as said Court may direct, if the judgment and sentence of the said Circuit Court of the United States, for the Northern District of Florida, against him shall be affirmed by the said

United States Circuit Court of Appeals, for the Fifth Circuit, then the above obligation to be void, else to remain in full force, virtue and effect.

[Seal] ROBERT GALLAGHER.
[Seal] R. H. TRAMMELL.
[Seal] J. E. HUGHES.
[Seal] W. H. BRITTON.

Approved:
CHAS. SWAYNE,
Judge of the District Court of the United States,
Northern District of Florida.

Indorsed: In the Circuit Court of U. S., Northern District of Florida, at Pensacola. U. S. Government, vs. Gallagher and Grace. Appeal Bond. Filed May 15th, 1907. F. W. Marsh, Clerk.

1147 And, thereupon. on the same day, to-wit, on the fifteenth day of May, A. D. 1907, the said defendants caused to be filed and duly approved their supercedeas bond, which is in the words and figures following, to-wit:

Know all men by these presents, That we, Walter E. Grace, as principal, and R. H. Trammell, J. E. Hughes and W. H. Britton, as sureties, are held and firmly bound unto the United States of America, in the full and just sum of three thousand ($3,000.00) dollars to be paid to the United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 15th day of May, in the year of our Lord, one thousand, nine hundred and seven.

Whereas, lately at the term, to-wit, the March adjourned term, held in the months of November and December, A. D. 1906, of the Circuit Court of the United States in and for the Northern District of Florida, in a suit pending in said Court between the United States of America, plaintiff, and Robert Gallagher, Iscar Sandor and Walter E. Grace, and others defendants, a judgment and sentence was rendered against the said Walter E. Grace, and the said Walter E. Grace has obtained a writ of error from the United States Circuit Court of Appeals for the Fifth Circuit to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Fifth Circuit, at the City of New Orleans, Louisiana, thirty days from and after the date of said citation, which citation has been duly served.

Now, the condition of the above obligation is such, that, if the said Walter E. Grace shall appear in the said United States Circuit Court of Appeals, for the Fifth Circuit, on the first day of the next term thereof, to be held at the City of New Orleans, Louisiana, on the third Monday of November, A. D. 1907, and from day to day thereafter during said term, and from term to term, and from time to time until finally discharged therefrom, and shall abide by and obey all orders made by the said United States Circuit Court of Appeals, for the Fifth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from, as said Court may direct, if the judgment and sentence of the said Circuit Court of the United States, for the Northern District of Florida, against him shall be affirmed by the said United States Circuit Court of Appeals, for the Fifth Circuit, then the above obligation to be void, else to remain in full force, virtue and effect.

[Seal] W. E. GRACE.
[Seal] R. H. TRAMMELL.
[Seal] J. E. HUGHES.
[Seal] W. H. BRITTON.

Approved:

CHAS. SWAYNE,
Judge of the District Court of the United States,
Northern District of Florida.

Indorsed: In the Circuit Court of U. S., Northern District of Florida, at Pensacola. U. S. Government, vs. Gallagher and Grace. Appeal Bond. Filed May 15th, 1907. F. W. Marsh, Clerk.

* * * * * * * * *

United States of America,
Northern District of Florida.

I, F. W. Marsh, clerk of the Circuit Court of the United States, for the Northern District of Florida, in pursuance of law, and of the foregoing writs of error, and as a return thereto, do hereby certify that the foregoing pages numbered from one to eleven hundred and fifty-one, inclusive, contain a full, true, complete and correct transcript of the record and proceedings of the said United States Circuit Court for the Northern District of Florida, in a certain cause therein depending, in which the United States is prosecuting Robert Gallagher, Walter E. Grace and others, under an indictment for a violation of Section 5440, of the Revised Statutes of the United States, and, wherein the said Robert Gallagher and Walter E. Grace are suing out a writ of error from the judgment of the said Court in said cause, including the original of said writs of error and the original citations issued thereunder together with the returns indorsed thereon, as the same remains on file and of record in said Court.

Witness my hand and the seal of said Court at the City of Pensacola, in said District, this the third day of June, in the year of our Lord, one thousand, nine hundred and seven.

[Seal] F. W. MARSH, Clerk.

1067 EXHIBIT "H."

UNITED STATES OF AMERICA,
Northern District of Florida, ss:

In the Circuit Court of the United States within and for the District Aforesaid, at the March Adjourned Term of said Court, in the Year of Our Lord One Thousand Nine Hundred and Six, Begun and Held at the City of Pensacola, within and for the District Aforesaid, on the Seventh Day of November, in the Year of Our Lord One Thousand Nine Hundred and Six.

The Grand Jurors of the United States of America, empanelled and sworn, within and for the District aforesaid, on their oaths present; that one W. S. Harlan, one Robert Gallagher, one Oscar Sandor, one E. Newlander, one C. C. Hilton (interlined and erased, alias Milton), one Jeb S. Howell, one John Atwell, one Walter E. Grace, one S. E. Huggins, one Archie Bellinger, one Harry Halverson (one Charles Menneke having been erased, and one Angelo, and one Lamater, alias Lameater added) whose Christian names, other than as given abive are to the Grand Jurors unknown heretofore, to wit; on the nineteenth day of July, in the year of our Lord, one thousand, nine hundred and six, in the County of Walton, State of Florida, within the District aforesaid and within the jurisdiction of this Court, did then and there falsely, unlawfully and wickedly conspire, combine, confederate and agree together and among themselves to commit an offence against the laws of the United States; that is to say, (to hold erased), to arrest, to return divers persons, to the Grand Jurors unknown, who had been, before the time aforesaid, in the employ and were indebted to, or alleged to be indebted to the Jackson Lumber Company, a corporation, and who had quitted the employment aforesaid, while in debt to, or alleged to be in debt to the said Jackson Lumber Company, with intent then and there to hold (the word erased), arrest and return the said divers persons to the Grand Jurors unknown, who had been, before the time aforesaid, in the employ and were indebted to or alleged to be indebted to the said Jackson Lumber Company, to a condition of peonage, with intent then and there to compel them, and each of them, the said divers persons to the Grand Jurors unknown, who had been, before the time aforesaid, in the employ and were indebted to, or alleged to be indebted to the said Jackson Lumber Company, to work for the said Jackson Lumber Company, a corporation as aforesaid, 1068 to be held by it, the said Jackson Lumber Company, a corporation, to work out a debt claimed to be due to the said Jackson Lumber Company by the said divers persons to the Grand Jurors unknown.

And afterwards, to-wit:—on the nineteenth day of July, in the year of our Lord, one thousand, nine hundred and six, in pursuance of, and for the purpose of effecting the object of the said conspiracy, the said Robert Gallagher, the said Walter E. Grace and the said

Oscar Sandor, did, by threats and force, within the District afore' said, and within the jurisdiction of said Court, to-wit: in the County of Walton, State of Florida, arrest one Trudice Mihaly, alias Trudich Mihaly, who had been, before the time aforesaid, in the employ and was indebted to, or alleged to be indebted to the Jackson Lumber Company, a corporation, and who had quitted the employment aforesaid, while in debt to, or alleged to be in debt to the said Jackson Lumber Company, and restrained him of his liberty, against his will and consent, and compelled him, the said Trudice Mihaly, alias Trudich Mihaly, to accompany them, the said Robert Gallagher, the said Walter E. Grace, the said Oscar Sandor to the place of business of the said Jackson Lumber Company, and did then and there wound, beat and ill treat the said Trudice Mihaly, alias Trudich Mihaly contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

And afterwards, to-wit: on the twenty-first day of July, in the year of our Lord, one thousand, n*u*ne hundred and six, in pursuance of, and for the purpose of effecting the object of the said conspiracy, the said Robert Gallagher, the said Oscar Sandor, and the said John Atwell, did by threats and force, within the District aforesaid, and within the jurisdiction of this Cour*y*, to-wit:—in the County of Walton, State of Florida, arrest one John Doe, the said name John Doe, being fictitious, the real name of the said person being to the Grand Jurors unknown, and which could not by them be ascertained, but who is a person of foreign birth, and nationality, a young man, with a smooth face, light complexion, being about five feet ten inches high, and weighing about one hundred and thirty pounds, and one Richard Roe, the said name Richard Roe being fictitious, the real name of the said persons being to the Grand Jurors unknown, and which could not by them be ascertained, but who is a person of foreign birth and nationality, and being a middle-aged man, with a large frame, and wearing a red beard, each of whom had been, before the time aforesaid in the employ and was indebted to, or alleged to be
1069 indebted to the Jackson Lumber Company, a corporation, and
who had quitted the employment aforesaid while in debt to, or alleged to be in debt to the said Jackson Lumber Company, and restrained them of their liberty, against their will and consent, and compelled them, the said John Doe and the said Richard Roe, to accompany them, the said Robert Gallagher, Oscar Sandor, and John Atwell to the place of business of the said Jackson Lumber Company, contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the United States.

And afterwards, to-wit: on the twenty fourth day of July, in the year of our Lord, one thousand, nine hundred and six, in pursuance of, and for the purpose of effecting the object of the said conspiracy, the said C. C. Hilton, the said Jeb S. Howell and the said S. E. Huggins, did, by threats and force within the District aforesaid, and within the jurisdiction of this Court, to-wit:—in the County of Walton, State of Florida, arrest one Rudolf Lanninger, who had been before the time aforesaid, in the employ and was indebted to, or alleged to be indebted to the Jackson Lumber Company, a corporation, and who had quitted the employment aforesaid, while in debt to, or alleged to be in debt to the said Jackson Lumber Company, and restrained him of his liberty, against his will and consent, and compelled him, the said Rudolf Lanninger to accompany them, the said C. C. Hilton (interlined alias Milton), Jebb. S. Howell and S. E. Huggins, to the place of business of the said Jackson Lumber Company, contrary to the *from* of the Statute in such case made and provided and against the peace and dignity of the United States.

WM. B. SHEPPARD,
United States Attorney.

L. M. DAVIS,
Foreman of the Grand Jury.

Endorsed: No. 590. The United States vs. W. S. Harlan, Robert Gallagher, Oscar Sandor, E. Newlander, C. C. Hilton, Jebb. S. Howell, John Atwell, Walter E. Grace, S. E. Huggins, Archie Bellinger, Harry Halverson, Charles Menneke (erased) one Angelo, one Lamater. Indictment Violation Sections 5440-5526 R. S. U. S. William B. Sheppard, United States Attorney. A true Bill. L. M. Davis, foreman of Grand Jury. Filed November 10th, A. D. 1906. F. W. Marsh, Clerk.

Endorsed further: Waiving arraignment, Defendants, W. S. Harlan, Rob't Gallagher, Oscar Sandor, E. Newlander, Walter E. Grace, Archie Bellinger, Harry Halvorson, and *obe* John La Maister plead "not Guilty" to this indictment, this Nov. 27, 1906. Blount & Blount, Scot M. Loftin, Maxwell & Reeves, Wm. W. Flournoy, Att'ys for Def's. Dated November 27, 1906.

To which is attached verdict of Petit Jury on trial of cause.

PENSACOLA, FLA., *December* 8, 1906.

We the jury find the defendants Robert Gallagher, Oscar Sandor and W. E. Grace *guilty as charged*. And the defendants, W. S. Harlan, E. Newlander, Archie Bellinger, Harry Halverson and John La Maiter *not guilty*.

JOHN G. WELSH, *Foreman.*

1070

EXHIBIT "N."

Page 264, Minutes U. S. Circuit Court, Northern District of Florida.

FRIDAY, *July* 29, 1904.

Court was opened, pursuant to adjournment by the Clerk, to enter the following order, to-wit:

Order.

It appearing that the law requires this Court to be kept open daily for the transaction of business in Equity and in Chambers, and it further appearing that business of a general character is transacted from day to day in Court, It is ordered, that pending the temporary absence of the presiding judge of this District, the Circuit Court be opened daily, both at Pensacola and at Tallahassee, and the Clerk be present, either in person or by deputy, and that a record of the same be entered upon the Minutes of the Court upon each day.

CHAS. SWAYNE,
U. S. District Judge, Northern District of Florida,
Presiding as U. S. Circuit Judge.

1071 EXHIBIT O.

In the Circuit Court of the United States in and for the Northern District of Florida.

In re ROBERT GALLAGHER.

Now comes the United States by its counsel, R. P. Reese and moves the court to strike out that portion of the sentence of defendant in this case which provides for "hard labor"; and that the warrant of sentence be amended so as to conform to the sentence as amended.

R. P. REESE,
Special Ass't to the Attorney General.

Endorsed: In Re Rob't Gallagher. Motion to Strike excessive sentence. R. P. Reese, Special Ass't to the Attorney General. Filed Nov. 1, 1909. F. W. Marsh, Clerk.

1072 UNITED STATES OF AMERICA,
Northern District of Florida:

I, F. W. Marsh, Clerk of the Circuit Court of the United States, in and for the Northern District of Florida, in pursuance of law, and as a return to the attached Citation, do hereby certify that the foregoing pages, numbered consecutively from one to ten hundred and seventy-one, inclusive, contain a full, true, complete and correct transcript of the record and proceedings of the said United States Circuit Court, in and for the Northern District of Florida, in a certain cause therein depending, in which Robert Gallagher was Petitioner for a Writ of Habeas Corpus, including the original Citation issued thereunder, together with the return endorsed thereon, as the same remains of file and of record in said Court.

Witness my hand and the seal of said Court at the City of Pensacola, in said District, this the 26th day of November, A. D. 1909.

[Seal U. S. Circuit Court, Northern Dist. of Florida,
Fifth Circuit.]

F. W. MARSH, *Clerk.*

1073 To the United States of America:

You are hereby cited and admonished to be and appear at a term of the United States Supreme Court to be holden at the City of Washington, in the District of Columbia, on the 3rd day of December, A. D. 1909, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States, for the Northern District of Florida, at Pensacola, wherein Robert Gallagher is appellant, and you are appellee, to show cause, if any there be, why the judgment mentioned in said appeal should not be corrected and speedy justice done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this the 3rd day of November, A. D. 1909.

THOS. G. JONES, *Judge.*

1074 [Endorsed:] Civ. 797. Ex Parte Robert Gallagher. Citation on Appeal.

Marshal's Return.

Executed the within citation on appeal, Nov. 9, 1909, at Pensacola Fla. upon R. P. Reese, Special Assistant to the Attorney-General of the United States of America, by handing to and leaving with him personally a true and correct copy.

T. F. McGOURIN,
U. S. Marshal,
By H. WOLF.
Chief Office Deputy.

Endorsed on cover: File No. 21,920. N. Florida C. C. U. S. Term No. 379. Robert Gallagher, appellant, vs. T. F. McGourin, United States marshal for the northern district of Florida. Filed December 2d, 1909. File No. 21,920.

In the Supreme Court of the United States.

OCTOBER TERM, 1910.

W. S. HARLAN, C. C. HILTON, AND S. E. Huggins, appellants, *v.* T. F. MCGOURIN, UNITED STATES MARSHAL for the Northern District of Florida.	No. 378.
ROBERT GALLAGHER, APPELLANT, *v.* T. F. MCGOURIN, UNITED STATES MARSHAL for the Northern District of Florida.	No. 379.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

BRIEF FOR THE UNITED STATES.

I.

STATEMENT OF CASE.

Orderly procedure required the submission of all the questions attempted to be raised for the first time upon these habeas corpus proceedings to the trial court or to the Circuit Court of Appeals when the main cases were before it for review. Instead of pursuing that course, appellants have resorted to measures which seem to bring them within the condemnation of *Toy Toy* v. *Hopkins* (212 U. S., 542) and *Kaizo* v. *Henry* (211 U. S., 146).

Appellants in each of these cases were indicted and convicted in the Circuit Court of the United States for the Northern District of Florida of conspiring to arrest and return certain persons to a condition of peonage, and sentenced December 14, 1906, to pay fines and serve terms of imprisonment. (R., p. 163 in No. 378, and p. 177 in No. 379.) The Circuit Court of Appeals for the Fifth Circuit affirmed the judgments of conviction. (R., p. 5 in each case.) In the Harlan case 180 errors (R., p. 735) and in the Gallagher case 119 errors (R., p. 995) were pressed in the Appellate Court, thus indicating how thoroughly the records were searched for the purpose of discovering points of attack.

Subsequently, petitions for writs of certiorari to review the cases, were presented to this court, but were denied, May 3, 1909 (214 U. S., 519). At this point, two and a half years having elapsed since their conviction and sentence, during none of which time were they deprived of their liberty, appellants found themselves confronted with the necessity of entering upon their sentences. Their counsel, however, devised a plan of challenging the jurisdiction of the trial court and the authority of the grand jury which returned the indictments. Accordingly, after some delay, they were surrendered into the custody of the United States marshal and petitions for writs of habeas corpus filed on the same day in the court where they were originally convicted (R., p. 1 in each case). The writs issued, testimony was taken, and on November 3, 1909, an order was entered dismissing the writs, the court filing an opinion overruling all the contentions of the petitioners (R., pp. 14 and 51 in No. 378, and pp. 10 and 45 in No. 379). Also, upon motion of the Government's attorney, the court struck out that portion of the sentences requiring them to be served at "hard labor" (R., p. 780 in No. 378, and p. 16 in No. 379).

The appellants were immediately admitted to bail (R., p. 17 in No. 378, and p. 13 in No. 379) to await the determination of these appeals.

The opinion of the court contained in the record, it is said, is inaccurate, and its final and corrected opinion appears in 180 Fed. Rep., 119.

QUESTIONS.

The assignments of error are identical in the two cases (R., p. 16 in No. 378; R., p. 13 in No. 379). The points made by them are, in substance, (1) that petitioners were not convicted and sentenced at a legal term of the Circuit Court; (2) that the indictments upon which they were tried were not found by a lawfully constituted grand jury; (3) that the indictments were not presented by the grand jury and returned into court; (4) that the Circuit Court should have reexamined the record in the main suit; and (5) that the Circuit Court erred in amending the sentences by striking out the words "hard labor."

Each of the petitions alleged, as a further ground for relief, that the offense of which petitioners were convicted was committed in the Middle District of Alabama and not in the Northern District of Florida. No error has been assigned upon the action of the court in overruling this contention.

The petition in No. 378 also alleged that the President had commuted Harlan, Huggins, and Hilton's sentences to six months, and that, under the law, they could not be required to serve such a short sentence in a penitentiary. Appellants in that case have also failed to assign error to the action of the Circuit Court in overruling this contention.

The questions as to the term of the court, the qualifications of the grand jury, and the return of the indictments were raised for the first time upon these habeas corpus proceedings.

ARGUMENT.

I.

THE ALLEGED COMMUTATION OF SENTENCE IN CASE NO. 378.

No error being assigned on this point, it is perhaps unnecessary to notice it. Suffice it to say that all the record shows (No. 378, pp. 35, 775) is that the President had directed the Attorney-General to commute. No formal order or warrant was offered in evidence, upon which alone, as the Circuit Court held (R., 53), it could act. See to that effect *United States* v. *Wilson*, 7 Pet., 150, 161. The records of the Department of Justice show that the President subsequently rescinded his action.

It is manifest that these parties not only speculated upon the chance of being pardoned (it being a rule of the Department not to consider an application for pardon until all proceedings in court were at an end) but took advantage of the disposition of the President to commute their sentences to escape imprisonment altogether.

II.

AS TO THE CONTENTION THAT THE OFFENSES CHARGED WERE COMMITTED IN A DISTRICT OTHER THAN THAT IN WHICH PETITIONERS WERE INDICTED AND TRIED.

The action of the Circuit Court in overruling this contention is also not specifically assigned as error, but the error assigned to the action of the court in refusing to reexamine the record in the main case seems, from the opinion of the court (R., p. 52, No. 378; R., p. 45, No. 379), to be intended to apply to this point, and it is understood that opposing counsel will press it.

As observed by the Circuit Court in its opinion, this question was raised before the Circuit Court of Appeals, where the convictions and sentences in each of these cases were affirmed (R., No. 378, p. 52; R., No. 379, p. 45), and the Circuit Court could not undertake to reexamine the question without usurping the authority and, in effect, reversing the judgment of another and higher tribunal. In other words, this was a plain attempt to use the writ of habeas corpus as a writ of error.

In each case a demurrer was filed to the indictment, specifically challenging the jurisdiction of the court, and error was assigned to the charge of the court to the effect that if an overt act in pursuance of a conspiracy was committed within the Northern District of Florida, it would have jurisdiction of the offense, although the conspiracy originated elsewhere. (R., No. 378, pp. 157–8, 761; R., 379, pp. 157–8, 863–4.)

Upon this point the Circuit Court said (R., p. 52, No. 378; R., p. 46, No. 379):

> The indictment in these cases charged that the offense was committed in the northern district of Florida. The verdict of the jury affirms that the charge is true. Habeas corpus is not a revisory or appellate writ in

> any respect. The record disproves that objection. This court can not go into that matter without usurping the authority, and in effect, reversing the judgment of another and higher tribunal. The court has, therefore, declined to look into the bill of exceptions on the trial in this case, which is a part of the record only for appellate purposes, and to consider whether the evidence before the circuit court for the northern district of Florida justified the finding that the offense was committed in the northern district of Florida.

In *Hyde* v. *Shine* (199 U. S., 62, 76), this court held that inasmuch as the indictment in that case alleged the conspiracy to have been entered into in the city of Washington, it was unnecessary to consider the question whether an indictment would lie in the jurisdiction where an overt act was committed. The cases at bar furnish stronger reasons why that question should not now be gone into, for the allegations in the indictments have been found to be true by the jury which returned a verdict of guilty. The place where the conspiracy was formed is a question of fact, and on habeas corpus a court will not review the finding of the jury by considering the weight of the evidence.

Even if the question were open on habeas corpus, it is without merit, as it has been repeatedly held that an indictment for conspiracy will lie in the district in which an overt act is done. See authorities cited on this proposition in *Hyde* v. *Shine*, 199 U. S., 72, 76, and *United States* v. *Rindskopf*, 6 Bis., 259;

27 Fed. Cas., 16165; *United States* v. *Newton,* 52 Fed. Rep., 275. Indeed, there appears to be no reliable authority to the contrary. The well settled doctrine that each overt act is a renewal of the conspiracy leads to the same result. (*United States* v. *Brace,* 149 Fed., 874, 877, 878; *Ware* v. *United States,* 154 Fed., 577; 207 U. S., 588; *Jones* v. *United States,* 162 Fed., 417, 425, et seq.; *United States* v. *Bradford,* 148 Fed., 413, 419; 152 Fed., 616, 617; 206 U. S., 563; *Lorenz* v. *United States,* 24 App. Cas. D. C., 337, 387, 388; 196 U. S., 640.)

For a full discussion of this proposition, with authorities, see brief for United States upon application for certiorari in these cases (214 U. S., 519).

It is also to be observed, as pointed out in the case of *Hyde* v. *Shine* (199 U. S., 62, 76), that while the gravamen of the offense is the conspiracy, an overt act is necessary under section 5440 of the Revised Statutes to complete the offense. That being so, the case would be specifically covered by section 731 of the Revised Statutes, which authorizes a trial in either district, where an offense is commenced in one district and completed in another. It should be noted that section 731 originally formed a part of section 30 of the act of March 2, 1867, chap. 169 (14 Stat., 471, 484), which was the old conspiracy section, and was doubtless incorporated therein for the purpose of preventing a miscarriage of justice in cases like that at bar, it being difficult and many times impossible to fix the precise time and place of the first meeting of the minds of the conspirators.

III.

THE APPELLANTS WERE TRIED AND CONVICTED AT A LAWFUL TERM OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

The minutes of the Circuit Court introduced in evidence in this proceeding show that the court began its March term at Pensacola on March 1, 1906, and continued in session, from day to day, the judge being present, until May 12, 1906, on which date it was ordered that the court adjourn "until to-morrow morning at 10 o'clock." (Rec., 378, pp. 55–76.) From Monday, May 14, 1906, until May 17, 1906, the minutes show that the court "was opened pursuant to the said order; present, the clerk and the marshal," and that it was adjourned "until to-morrow morning at 10 o'clock." (Rec., 378, p. 77.) The clerk testified that court was in session at Tallahassee actually trying cases May 13, 14, 15, and 16, 1906, both he and the marshal being present at Tallahassee at that term, but that his deputy and the marshal's deputy were in charge of their respective offices at Pensacola; that they reported that they actually opened and adjourned the court as stated by the minutes, and that on the report of his deputies that they did, he made the entries on the minutes. (Rec., 378, pp. 45–46–48.)

The minutes of the court further show that from May 18, 1906, Judge Swayne continued to hold the Circuit Court at Pensacola personally down to June 6, 1906, on which date the following order was made:

> It is ordered that pending the absence of the presiding judge of this court that the same be

> opened and adjourned in pursuance of Rule XIII of the rules of practice of this court. (Rec. 378, pp. 78–104.)

The minutes then show that from June 7 until Saturday, November 3, 1906, the court "was opened pursuant to the said order; present, the clerk and the marshal," and adjourned from day to day, and that Judge Swayne resumed holding court on November 6, 1906. (Rec., 378, pp. 105–122.)

The testimony of the clerk was to the effect that Judge Swayne left the State on or about June 7, 1906, and remained away until about November 4, 1906. (Rec., 378, p. 46.)

It is contended that the holding of the Tallahassee session terminated the term at Pensacola, and that the subsequent November session at Pensacola was unauthorized by law.

At the time of the indictment, trial, and conviction of appellants, the law provided for two terms of the Circuit Court for the Northern District of Florida, one beginning the first Monday in February at Tallahassee, and the other beginning the first Monday in March at Pensacola. (Sec. 658, Rev. Stat. U. S., as amended July 23, 1894, 28 Stat., 117.) The amendment made by the act of July 23, 1894, eliminated the term at Jacksonville, beginning the first Monday in December, prescribed by section 658, Revised Statutes.

If appellants' contention is correct, then the opening of the regular term of the Circuit Court at Pensacola in March, 1906, necessarily terminated the term which began at Tallahassee the first Monday of February of that year, and thus curtailed the Tallahassee term to one month.

Furthermore, by the same line of reasoning, the March term at Pensacola was never interrupted, as the May sessions of the court at Tallahassee (Rec., No. 378, pp. 45, 46), were illegal and void, there being no authority, according to the reasoning of appellants, for an adjourned term of the Circuit Court when another regular term at a different place intervened, and the May session at Tallahassee was presumably an adjourned and not a regular term, and the March term at Pensacola intervened. Therefore the holding of the May session at Tallahassee had no effect legally upon the March term at Pensacola, which continued until the February term, 1907, at Tallahassee began. In other words, appellants' argument simply invalidates the May session at Tallahassee and not the November session at Pensacola.

But were it otherwise, the authorities are clear as to the power of the court to continue the March term at Pensacola during its session at Tallahassee.

The Revised Statutes provide:

> SEC. 612. Circuit courts may be held at the same time in the different districts of the same circuit.
>
> SEC. 672. If neither of the judges of a Circuit Court be present to open and adjourn any regular or adjourned or special session, either of them may, by a written order, directed alternatively to the marshal, and, in his absence, to the clerk, adjourn the court from

time to time, as the case may require, to any time before the next regular term.

The following order, issued July 29, 1904, was in force prior to and during part of the March term, 1906, of the Circuit Court at Pensacola (R., No. 378, p. 778; R., No. 379, p. 1029):

> It appearing that the law requires this court to be kept open daily for the transaction of business in equity and in chambers, and it further appearing that business of a general character is transacted from day to day in court. It is ordered, that pending the temporary absence of the presiding judge of this district, the Circuit Court be opened daily, both at Pensacola and Tallahassee, and the clerk be present, either in person or by deputy, and that a record of same be entered upon the minutes of the court upon each day.

During the March term (May 18, 1906) a new code of rules was adopted, of which the following is the thirteenth (R., No. 378, pp. 78, 84; R., No. 379, pp. 72, 77):

> During the temporary absence of the Judge the Court shall be deemed open daily at each of the Clerk's offices in the District, for the transaction of business on the equity side of the Court, and also for the filing of papers and the transaction of business of a general character in Court, and the Clerk shall be present, in person or by deputy, and a record of the same shall be entered upon the minutes of the Court upon each day.

As above stated, the minutes of the court show that on June 6, 1906, Judge Swayne, holding the Circuit Court for the Northern District of Florida, made the following order (Rec., 378, pp. 102, 104; Rec., 379, pp. 96, 98):

> It is ordered that pending the absence of the presiding judge of this Court that the same be opened and adjourned in pursuance of Rule XIII of the rules of practice of this Court.

Under these rules and orders the March term of the court was continued during the session of the court at Tallahassee and subsequently during the absence of the judge from the State down to his return to Pensacola in November, 1906, when the indictment, trial, and conviction of appellants occurred.

The Circuit Court of Appeals for the Fifth Circuit, the circuit in which these appellants were tried and convicted, long ago settled the point now made in the case of *Florida* v. *Charlotte Harbor Phosphate Co.* (70 Fed., 883, 885), wherein the facts show that the court had adjourned for the express purpose of allowing the presiding judge to hold court at another place in the same district, and that upon its conclusion the former term was resumed. The court said:

> As a general proposition, the court had power to adjourn to a distant day, within the discretion of the presiding judge, and, at the time designated, resume the regular and continuous session of the court. (Anon., 1 Cranch, C. C., 139 Fed., Fed. Cas., 442; *Mechanics Bank* v.

> *Withers*, 6 Wheat., 107.) It is difficult to see why the intervention of another term at another place during the adjournment should affect the matter, and constitute an exception.

This question was also before the Circuit Court of Appeals for the Sixth Circuit in *East Tennessee Iron and Coal Company et al.* v. *Wiggin et al.* (68 Fed., 446). Mr. Justice Lurton, in delivering the opinion, thus disposed of the matter:

> The cause appears to have been tried with a jury in February, 1894. A motion for a new trial was made and overruled February 9, 1894. The bill of exceptions is dated June 21, 1894. Appellees say that this was after the term had closed. This insistence is based upon the statute prescribing the terms of the Circuit Court for the Eastern District of Tennessee. The statute provides for terms at Knoxville beginning the second Mondays in January and July, and at Chattanooga, in the same district, beginning the first Mondays in April and October. The argument is that, when the Chattanooga term began, the Knoxville term was necessarily at an end. This is not sound. Section 612, Revised Statutes, provides that Circuit Courts may be held at the same time in the different districts of the circuit. By section 611, cases may be heard and tried by each of the judges authorized to hold the Circuit Court, sitting apart and concurrently. Unless sooner adjourned, a term of the United States Circuit Court may extend from the beginning of one term to the opening

> of the succeeding statutory term of the same court. The practice has in this circuit been almost universal to keep the court open from one statutory term to the succeeding regular term. This bill of exceptions was allowed and signed before the beginning of the ensuing term, and is altogether regular and valid.

To the same effect are *United States* v. *Finnell,* 185 U S., 236; *United States* v. *Pittman,* 147 U. S., 669, 671; *Hume* v. *Bowie,* 148 U. S., 245; *McDowell* v. *United States,* 159 U. S., 596, 600; *Bronson* v. *Shulton,* 104 U. S., 410, 415; *Harrison* v. *German-American Fire Ins. Co.,* 90 Fed., 758, 762; *Schofield* v. *Horse Springs Cattle Co.,* 65 Fed., 433.

In *United States* v. *Finnell,* the court, speaking by Mr. Justice Harlan, said (185 U. S., 242):

> It is said that no business could be lawfully transacted "in court" unless the judge was personally present. We do not assent to that view. It rests upon a construction which is too literal. The services for which Finnell's account was rendered constituted business actually transacted in court, unless it be that a clerk could never enter any order unless the judge was, at the time, in the place, room, or building where his court was ordinarily held. But we can not so adjudge. There are many things that may be legally done by a clerk pursuant to the written order of a judge sent to him, and which, being done, may be fairly held to constitute business "actually transacted in court."

In *Hume* v. *Bowie,* a much greater exertion of power was upheld. Speaking by Chief Justice Fuller the court said (148 U. S., 254):

> It is argued that, as Rule 2, fixing the terms of the Circuit Court, provides that the May term shall not continue beyond the second Saturday in July, except to finish a pending trial, the order extending the term under Rule 62, for the special purpose of settling bills of exceptions, beyond the limit fixed by Rule 2, could not extend such term beyond the commencement of the succeeding term, which was in this instance the third Monday of October, 1888. The May term, it is said, must necessarily have come to an end, either by the act of the justice who held it, or by operation of law through the efflux of time and the commencement of the succeeding term. But we are of opinion that under these rules the term may be continued indefinitely by order of court, so far as the settlement of bills of exceptions is concerned, and concur in the views of the Supreme Court of the District expressed in *Jones* v. *Pennsylvania Railroad* (18 Dist. Col., 426), where it was held that Rule 62 was valid, and that while it would be more proper to specify the time to which the term might be extended under the provisions of that rule, yet an omission to do so did not invalidate the order.

In *Harrison* v. *German American Fire Insurance Company* the court said (90 Fed., 762):

> The practice obtaining in some of the other districts obtains here, of entering no order of

> sine die adjournment at the close of the actual sitting of the court for a stated term. The court is left open, so that further sitting may be taken up as a part of that term at any time when the business of the division requires it. When the date has arrived, under the statute fixing the terms for the commencement of a term, the clerk enters the sine die adjournment of the last term.

The rule deducible from the decisions is that after a term of court has opened it does not terminate until there has been a final or *sine die* adjournment.

The minutes of the court and the testimony introduced at the hearing below by the appellants, not only fail to establish that a final adjournment had been had, but, on the contrary, evince a well-defined purpose to keep the term alive.

If the November session at Pensacola is not to be regarded as a continuance of the regular March term, it must at least be regarded as a special term for the trial of criminal causes, authority for which is found in section 661 of the Revised Statutes, which provides:

> Any circuit court may, at its own discretion, or at the discretion of the Supreme Court, hold special sessions for the trial of criminal causes.

There is no method prescribed under this section for the calling or the convening of such special sessions of the court, therefore the order of Circuit Judge Shelby for venire for a grand and petit jury (R., 378, p. 120) and the convening of the court on the 5th day of November, 1906 (ib., p. 122), the organization of the grand jury on November 7 (ib., pp. 123–4), and afterwards the organization of the petit jury on November 12, 1906 (ib., pp. 125–6), would constitute the beginning of a special term, or a special session of the court under the statute quoted.

Section 662, which follows the one quoted, prescribes the method of calling a special session for the trial of criminal cases near the place of offense, and requires thirty days' notice of publication to be made for the holding of such special session. But this notice by publication is prescribed only when the court is to be held for the trial of criminal causes *at some place other than the place appointed by law for the stated sessions and terms of court.* Pensacola is a place appointed by law, therefore the necessity for advertising, etc., would not apply.

Section 670, Revised Statutes, may seem to be in conflict with section 661, quoted, but on examination it will be found that section 670, Revised Statutes, which was enacted May 15, 1862, gives authority at special terms to transact any and all business except "trying any cause by a jury," has reference solely to the trial of *civil* cases, and is therefore in no wise in conflict with section 661, which gives authority to the court at special sessions to try criminal cases.

There is no doubt, however, from the record that the intention of the court was that the November session should be a continuance of the March term. But assuming for the sake of argument that this was not so, it is certainly to be regarded as a special session for the trial of criminal causes, there being no limitation upon the power of the court to hold such a session.

IV.

THE INDICTMENTS WERE RETURNED BY A LAWFULLY ORGANIZED GRAND JURY—QUESTIONS NOT OPEN ON HABEAS CORPUS.

Appellants seek to show that as Judge Shelby, United States circuit judge for the Fifth Circuit, was outside of the Northern District of Florida, though within his circuit, at the time he issued the order for empanelling the grand jury which returned the indictments here involved (R., 120 in case No. 378), such order was invalid, and therefore the grand jury which assembled in response to that order had no authority in law to act. In other words, the contention seems to be that a circuit judge, whose authority is coterminous with the limits of his circuit, when making an order affecting any term of the courts under his jurisdiction, must be physically present within the district in which is located the court which his order will affect.

It has been repeatedly held that objections of this character are never jurisdictional, and for that reason can not be raised on habeas corpus. They must be taken advantage of by plea in abatement or motion to quash, failing in which the right to thereafter object is held to be waived. (*Kaizo* v. *Henry,* 211 U. S., 146, 149; *Rodriguez* v. *United States,* 198 U. S., 156, 165; *In re Wood,* 140 U. S., 278, 285; *In re Wilson* id., 575, 585; *United States* v. *Gale,* 109 U. S., 65, 69; and *Ency. U. S.* Sup. Ct. Rep., vol. 6, p. 576.)

In *Kaizo* v. *Henry*, an appeal from an order discharging a writ of habeas corpus, this court said (211 U. S., 149):

> These well-settled principles are decisive of the case before us. Disqualifications of grand jurors do not destroy the jurisdiction of the court in which an indictment is returned, if the court has jurisdiction of the cause and of the person, as the trial court had in this case. *Ex parte Harding*, 120 U. S., 782; *In re Wood*, 140 U. S., 278; *In re Wilson*, 140 U. S., 575. See *Matter of Moran*, 203 U. S., 96, 104.) The indictment, though voidable, if the objection is seasonably taken, as it was in this case, is not void. (*United States* v. *Gale*, 109 U. S., 65.) The objection may be waived, if it is not made at all or delayed too long. *This is but another form of saying that the indictment is a sufficient foundation for the jurisdiction of the court in which it is returned, if jurisdiction otherwise exists.* That court has the authority to decide all questions concerning *the constitution, organization and qualification of the grand jury*, and if there are errors in dealing with these questions, like all other errors of law committed in the course of the proceedings, they can only be corrected by writ of error.

Rodriguez v. *United States* is quite analogous in principle to the case at bar. The court said (198 U. S. 164):

> Here the objection to the grand jury was, in substance, that it was not such a body as

> could legally find an indictment. This view rests upon the ground that the names were placed in the box by a jury commissioner, and by a deputy clerk, the latter, it is contended, having no authority to act at all in such a matter in place of the clerk, because the statute required the joint action of a commissioner and the clerk of the court. If, therefore, the requirement that the grand jurors should be selected by the commissioner and the clerk was a fundamental requisite—that is, if the deputy clerk, in the absence of the clerk, had no authority under any circumstances to act—then the motion in arrest of judgment did not come too late. * * * By not excepting to the ruling of the court the accused must be held to have acquiesced in it, and to have waived the objection made to the grand jury. We perceive no reason why they could not have legally waived an objection based upon the grounds stated in the motion.

In re Wilson was an original application to this court for writ of habeas corpus. In explaining *United States* v. *Gale* (109 U. S., 65) the court said (140 U. S., 584):

> The opinion is carefully guarded, and does not reach to the precise question here presented; but its implication, and the drift of the authorities referred to, is that a defect in the constitution or organization of a grand jury which does not prevent the presence of twelve competent jurors, by whose votes the indictment is found, and which could have been cured if the attention of the court had been called to it at the time, or promptly remedied

by the empaneling of a competent grand jury, is waived if the defendant treats the indictment as sufficient, pleads not guilty, and goes to trial on the merits of the charge. There is good sense in this conclusion. The indictment is the charge of the State against the defendant, the pleading by which he is informed of the fact, and the nature and scope of the accusation. When that indictment is presented, that accusation made, that pleading filed, the accused has two courses of procedure open to him. He may question the propriety of the accusation, the manner in which it has been presented, the source from which it proceeds, and have these matters promptly and properly determined; or, waiving them, he may put in issue the truth of the accusation and demand the judgment of his peers on the merits of the charge. If he omits the former and chooses the latter, he ought not, when defeated on the latter, when found guilty of the crime charged, to be permitted to go back to the former and inquire as to the manner and means by which the charge was presented.

If it be, therefore, a doubtful question, whether the defendant can, after trial and verdict, take advantage of such a defect by direct challenge, it would clearly seem that it is one not going to the matter of jurisdiction, and one which can not be taken advantage of by a collateral attack in habeas corpus.

See also—

In re Eckart (166 U. S., 481, 483).
Carter v. *Texas* (177 U. S., 442, 447).

In *United States* v. *Gale* (*supra*), this court referred approvingly to the Robinson case (2 Parker Crim. Cas., 235, 308, 311), wherein the Supreme Court of New York held that a grand jury summoned by the sheriff without a precept from the district attorney, as required by law, could not be objected to after trial and conviction.

Furthermore, the objection is without merit, for the judge, it must be conceded, was at least acting *de facto,* and when the grand jury was duly organized and became an arm of the court, as a result of his order for a venire, his authority to issue such order can not be collaterally attacked. (*Ex parte Henry Ward,* 173 U. S., 452.)

V.

THE INDICTMENTS WERE PROPERLY PRESENTED BY THE GRAND JURY AND RETURNED INTO COURT.

The indorsements on the two indictments upon which appellants were tried and convicted indicate that they were properly found and returned by the grand jury. (Rec., No. 378, p. 157; Rec., No. 379, p. 154.)

The records in the main cases also explicitly state that the indictments were presented in open court (Rec., No. 378, pp. 158–159; Rec., No. 379, pp. 169–170.)

Furthermore, the testimony at the hearing upon these habeas corpus proceedings, given by members of the grand jury themselves, shows conclusively that both indictments were found and approved by the grand jury and returned in open court. (Rec., No. 378, pp. 36–43; Rec., No. 379, pp. 29–37.)

It is true that the amended indictment in case No. 378 was not formally voted upon, but the testimony of the grand jurors themselves establishes that they approved and returned it in open court, the grand jury being polled at the time by the clerk (ib.).

The testimony in the case is corroborated by the entries as to the return of the indictments in the criminal minutes of the court. (Rec. No. 378, pp. 30, 31; Rec. No. 379, pp. 24, 25.)

Appellants attack the sufficiency of the criminal minutes, because not written up each day; but, as held by the Circuit Court, it is clearly sufficient if they were made up within the term.

In any event, we fail to see how discrediting the minutes, which are merely corroborative of the testimony as to the actual return of the indictment by the grand jury, aids the appellants. It is incumbent on them, who are attacking the validity of the indictment, to show that it was not properly returned, and discrediting the minutes does not do this.

The authorities show that the fact that the grand jury did not formally vote upon the indictment is immaterial, their assent being presumed from its return into open court.

In *Frisbie* v. *United States* (157 U. S., 160, 163, 165) the defendant endeavored to object to the indictment on the ground that it was not endorsed "a true bill," and did not bear the signature of the foreman of the grand jury. The court said:

> * * * But in this country the common practice is for the grand jury to investigate any alleged crime, no matter how or by whom suggested to them, and after determining that the evidence is sufficient to justify putting the party suspected on trial, to direct the preparation of the formal charge or indictment. Thus they return into court only those accusations which they have approved, *and the fact that they thus return them into court is evidence of such approval*, and the formal indorsement loses its essential character.
>
> * * * * *
>
> The indorsement was no part of the charge against the defendant. If no indictment had in fact been found by the grand jury—in other words, if there was no legal accusation against him—the defendant should have objected on this ground when the court called upon him to plead to this which it assumed to have been properly presented to it. "The very fact of pleading to it admits its genuineness as a record." (*State* v. *Clarkson*, 3 Alabama, 378, 383.)

In *Renigar* v. *United States* (172 Fed., 646, 654) the Circuit Court of Appeals for the Fourth Circuit said:

> * * * If the grand jury is present when the presentment is made, their assent is conclusively presumed, unless something to the contrary appears. * * *
>
> As was said in Cawood's case:
>
> "It is necessary that it should be presented publicly by the grand jury; that is, the evi-

> dence required by law to prove that it is sanctioned by the accusing body." * * *

See also *In re Wood* (140 U. S., 278, 285).

It is further objected that the amended indictment was not supported by evidence, the contention being that the grand jury should have recalled the witnesses. This is wholly without merit, for the grand jury had previously heard the witnesses, was familiar with the evidence, and was therefore in position to make presentment of their own knowledge. (*Hale* v. *Henkel,* 201 U. S., 43, 62; A. & E. Enc. Law, vol. 17, p. 1285.)

VI.

APPELLANTS COULD NOT ON HABEAS CORPUS CONTRADICT THE RECORD AS TO THE REGULARITY OF THEIR INDICTMENT, TRIAL, AND CONVICTION.

Jurisdiction in these habeas corpus proceedings to inquire into the validity of the indictment and conviction of petitioners is rested upon *Ex parte Bain* (121 U. S., 1) and *Hans Nielsen, petitioner* (131 U. S., 176). But in both those cases the defect in the original proceedings appeared on the face of the record, while here petitioners have gone outside of the record and by attacks upon the minutes of the court endeavored to show a want of jurisdiction in the trial court, notwithstanding the record in the original cases, indicates regularity.

Thus, the record in No. 387, known as the Harlan case, shows that the indictment was returned at a stated term of the court, held November 14, 1906, by a grand jury "duly chosen and empaneled and sworn in said court at said term thereof," presented in "open court," and being indorsed, "A true bill, K. M. Davis, foreman. Filed November 14, A. D. 1906, F. W. Marsh, clerk." (Rec. No. 378, pp. 158, 159.)

The bill of exceptions in that case states that the trial, conviction, and sentence of the defendents occurred at "the March adjourned term" of the Circuit Court. (Rec. No. 378, pp. 166, 733.) The indictment itself states that it was returned at "the March adjourned term" of the Circuit Court. (Rec. No. 378, p. 155.)

The record in No. 379, known as the Gallagher case, contains similar entries as to the finding and return of the indictment (Rec. No. 379, pp. 169–170, 151), and indicates that the trial, conviction, and sentence were had at a regular term of the court.

Can the petitioners be permitted to come into court now and contradict this record by going into an inquiry as to the return of the indictment and attempting to discredit the minutes of the court? Clearly not. The rule is thus stated in *Re Mayfield* (141 U. S., 101, 116):

> The point is taken in the brief submitted by the Attorney-General that the Supreme Court has no power to consider this question upon an application for a writ of *habeas corpus*. This court has held, however, in a multitude of cases, that it had power to inquire with regard to the jurisdiction of the inferior court, either in respect to the subject-matter or to the person, even if such inquiry involved an examination of facts outside of, *but not in-*

> *consistent with*, the record. (*Ex parte Yerger*, 8 Wall., 85; *Ex parte Virginia*, 100 U. S., 339; *Ex parte Carll*, 106 U. S., 521; *Ex parte Yarbrough*, 110 U. S. 651; *Ex parte Bigelow*, 113 U. S. 328; *Re Nielsen*, 131 U. S. 176; *Re Savin*, 131 U. S. 267.) In *Re Cuddy* (131 U. S., 280) it was held directly, that where the petitioner had been committed for a contempt, he was at liberty, upon application for a writ of *habeas corpus*, to allege and prove facts *not contradictory to the record*, which went to show that the court was without jurisdiction.

In *re Wilson*, 140 U. S., 575, 583, the court intimates that *Ex parte Bain*, supra, is a departure of the strict rule on the subject, laid down in *Ex parte Watkins*, 3 Pet., 193, 202–3, as to the finality of a judgment of a court of competent jurisdiction.

This would seem sufficient in itself to dispose of the points above discussed as to the term of the court, the organization of the grand jury, and the return of the indictment.

VII.

THE CIRCUIT COURT PROPERLY STRUCK OUT THAT PORTION OF THE SENTENCES REQUIRING THEM TO BE SERVED "AT HARD LABOR."

The court below, on motion of the Government's attorney, ordered that so much of the original sentences as required service "at hard labor" be struck out. (R., 780 in No. 378, and 16 in No. 379.) That court was the one in which they had been previously tried and convicted, and in thus correcting the sentences it acted in accordance with the principles laid down by this court in the case of *Bonner* (151 U. S., 259, 261), wherein it was said:

> Much complaint is made that persons are often discharged from arrest and imprisonment when their conviciton, upon which such imprisonment was ordered, is perfectly correct, the excess of jurisdiction on the part of the court being in enlarging the punishment or in enforcing it in a different mode or place than that provided by law. But in such case there need not be any failure of justice; for, where the conviction is correct and the error or excess of jurisdiction has been as stated, there does not seem to be any good reason why jurisdiction of the prisoner should not be reassumed by the court that imposed the sentence in order that its defect may be corrected.
>
> * * * * *
>
> The court is invested with the largest power to control and direct the form of judgment to be entered in cases brought up before it on habeas corpus. Section 761 of the Revised Statutes on this subject provides that: "The court, or justice, or judge shall proceed in a summary way to determine the facts of the case by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require." It would seem that in the interest of justice and to prevent its defeat, this court might well delay the discharge of the petitioner for such reasonable time as may be necessary to have him taken before the court where the judgment was rendered, that the defects for want of jurisdiction which are

> the subject of complaint in that judgment may be corrected. (*Medley, petitioner*, 134 U. S., 160, 174.)

In that case the defendant had been sentenced to a year in the *penitentiary*, and the contention was that under the law the court was without authority to require the sentence to be served in such an institution. This court entertained the same view, but in ordering his discharge stated that it was without prejudice to the right of the United States to take steps to have him resentenced in accordance with law and the verdict against him.

In the cases at bar the hard-labor feature was separable from the rest of the sentence. It constituted the excess, the court granted relief from it, the defendants not yet having entered upon their sentences, and it is difficult to see upon what reasonable ground complaint can now be made.

VIII.

CONCLUSION.

The language of this court in the recent case of *Toy Toy* v. *Hopkins* (212 U. S., 542, 548) seems to constitute an appropriate answer to all the questions sought to be raised in these proceedings:

> If such were the facts, and they made out a want of jurisdiction under the applicable statutes, which on the merits we do not hold, the Circuit Court, nevertheless, was authorized to hear and pass upon those questions in the first instance, and its decision

> was open to review in the Appellate Court by writ of error. But it could not be attacked collaterally as absolutely void, and habeas corpus can not be availed of as a writ of error.

Furthermore, the trial court, in the cases at bar, had jurisdiction by law of the offenses and of the parties. Its judgments, therefore, are not nullities. (*Ex parte Watkins*, 2 Pet. 193, 202–3; *Ex parte Bigelow*, 113 U. S., 328, 331; *In re Wilson*, 140 U. S. 575, 583.) Nor can it be shown that any of the substantial rights of the defendants have been prejudiced. (*Agnew* v. *United States*, 165 U. S., 36, 44.)

It is respectfully submitted that the judgments below should be affirmed.

William R. Harr,
Assistant Attorney-General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1910.

W. S. HARLAN, C. C. HILTON, AND S. E. Huggins, appellants, *v.* T. F. MCGOURIN, UNITED STATES MARSHAL for the northern district of Florida.	No. 378.
ROBERT GALLAGHER, APPELLANT, *v.* T. F. MCGOURIN, UNITED STATES MARSHAL for the northern district of Florida.	No. 379.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

THE BILL OF EXCEPTIONS IN THE MAIN CAUSES CONSTITUTES NO PART OF THE RECORD AND IS NOT OPEN TO REVIEW ON HABEAS CORPUS.

The precise question was decided by Judge Taft in *re Haskell* (52 Fed. Rep., 795). In that case, as here, the contention was that there was no evidence proving venue of the offense within the territorial jurisdiction of the trial court. In disposing of this contention, Judge Taft said (ib., 797–798):

> It does appear from the petition herein that the petitioner is in lawful custody and

should not be discharged. His claim is that he was convicted without any evidence proving venue of the offense within the territorial jurisdiction of the Lucas County common pleas court; that he was thereby deprived of his liberty without due process of law, and was denied the equal protection of the laws by the State of Ohio, in violation of the fourteenth amendment to the Constitution of the United States; and that he is therefore now "in custody in violation of the Constitution * * * of the United States," within the words of section 753, above given.

Without considering the question whether such a defect in the evidence, if it could be made to appear, would render the petitioner's conviction a violation of the amendment relied on by him, *it is sufficient to say that it must be conclusively presumed from the averments of the petition and the indictment and journal entries accompanying it, that the fact of the commission of the offense in Lucas County was made to appear from evidence to the trial court.* It is clear from the papers presented that the petitioner was indicted by a grand jury and was tried and convicted by a petit jury, that the court had jurisdiction of the offense charged in the indictment, and had jurisdiction to pronounce the sentence which was imposed on conviction of the offense charged. Whether the evidence before the court sustained the averments of the indictment is a question which can not be examined in the collateral habeas corpus proceeding. When the indictment charges a crime within

> the jurisdiction of the court, and the record of the court shows a trial and conviction and a judgment properly founded on the indictment and within the lawful jurisdiction, it is conclusively presumed, in a collateral attack, that the evidence adduced was sufficient to sustain the indictment and judgment.
>
> The failure of the State of Ohio to prove the venue of the offense in Lucas County, as alleged by the petitioner, can only appear from a consideration of the bill of exceptions stating all the evidence; *but the bill of exceptions is not a part of the record of a judgment into which a court may look in a proceeding where the judgment is collaterally attacked.* It is only a part of the record in direct proceedings on error for the examination of a reviewing court, and can never be considered in habeas corpus to test the validity of the judgment. For this reason it follows that the sentence pronounced, under which the prisoner is confined, was within the jurisdiction of the court, and that the petitioner is not illegally restrained of his liberty. The application for the writ is therefore denied.

In re Stupp (12 Blatch., 501, 506–7), Judge Blatchford said:

> * * * When the various sections of the Revised Statutes speak of denying the "facts" set forth in the return, and of alleging any other material "fact," and of ascertaining the material "facts," and of determining the "facts" of the case, they have no reference to the merits of the evidence which was put

> in before the commissioner as tending to the conclusion of criminality. *Where a person is held on process on a final judgment, after conviction, on a trial on an indictment, and a habeas corpus is issued,* the return to the writ states, as the cause of his detention, the process, and, either on such return alone or by the aid of a certiorari, the final judgment, the conviction, *the fact of a trial,* and the indictment are brought before the court. These are the "facts" of the case, on the habeas corpus. *The particulars of the evidence which led to the conviction are no part of such facts.* In determining, on habeas corpus, the "facts" of the case, the court does not determine what were the facts of the transaction which constituted the crime of which the party was convicted. It only determines whether there was an indictment, a trial, a conviction, a final judgment, a sentence and process of execution, and jurisdiction of such proceedings. It does not retry the case. So, in the present matter, to determine the "facts" of the case is not to retry the matter on the evidence, and determine what were the facts and particulars of the transactions constituting the alleged crimes.

See also Church on Habeas Corpus, second edition, section 73, and authorities cited.

No case cited by counsel for appellants supports this contention that the court can consider the bill of exceptions in the main case for the purpose of inquiring into the sufficiency of the evidence, or whether there is any evidence at all to support the verdict and judgment. An examination of the bill of exceptions for such purposes necessarily involves the exercise of appellate and corrective power over the trial court. Whether there is any evidence at all to support the verdict is a question for the court which tries the defendant, and error in that respect can be reversed on appeal, but not on habeas corpus. A brief statement of the cases relied upon by appellants shows their inapplicability to the present cases.

In *Ex parte Lange* (18 Wall., 163) it appeared upon the face of the judgment that the court had imposed a sentence beyond its jurisdiction.

In re Snow (120 U. S., 274) the excess of jurisdiction appeared upon the face of the judgment.

In *Hans Nielsen* (131 U. S., 176) the record showed that the Government by demurrer admitted the plea of *autre fois convict*.

In re Bain (121 U. S., 1) the record showed the action of the court allowing an amendment to be made to the indictment.

None of the cases cited or reported, so far as we are advised, shows that the court has ever looked into the bill of exceptions for the purpose of considering the evidence from any view point.

REFERENCES TO THE BILL OF EXCEPTIONS IN THE MAIN CAUSES SHOWING THAT THERE WAS EVIDENCE TO SUPPORT THE INDICTMENT.

THE HARLAN CASE, No. 378.

(The references are to the red numbering.)

Harlan and his codefendants were indicted for (1) conspiring in the Northern District of Florida on July 24, 1906, to arrest one Rudolph Laninger with the intent that he should be returned to a condition of peonage,—"that is to say: to the compulsory service of the Jackson Lumber Company, a corporation, in working out an indebtedness alleged to be due by him to that company;" and (2) with conspiring to arrest Laninger with intent that he should be held in such condition; and the arrest of Laninger by Harlan's codefendants in that district was alleged as an overt act in furtherance of the conspiracy. (R. 155–7.)

Harlan was manager of the Jackson Lumber Company (R., 673), Hilton a woods rider in its turpentine department (R., 647), and Huggins was engaged in recruiting labor for others (R. 667).

There were seven departments of the Jackson Lumber Company, viz, the turpentine, the logging, sawmill, shipping, planing mill, commissary, and selling department, each under a superintendent employed by Harlan, who had general supervision over the whole business (R., 673–674). Gallagher was one of his foremen.

The case was tried under instruction from the court, in part as follows (R., 714–15, 716–17, 717–18):

> The offense of conspiracy under the laws of the United States is sufficiently proved if the

jury is satisfied from the evidence in this case that two or more of the defendants indicted entered into an agreement to accomplish the design of arresting and returning Rudolph Laninger to a condition of peonage, and if the evidence shows such design was arrived at by a tacit understanding which was followed by some act done by one or all of the parties charged in the indictment in furtherance of that agreement, the joint assent of all may be proved by direct testimony or may be inferred from facts which will satisfy the jury.

You could not consider evidence of acts and facts not directly connected with the conspiracy charged in the indictment as raising any presumption that because other wholly disconnected things were done by the defendants, therefore the defendants were capable of and for that reason actually did what is charged in the indictment. But on the other hand, if you believe from evidence not directly concerning the conspiracy to arrest Laninger, that a general system of business existed at the time of his arrest at and about the Lockhart camps, with the knowledge and cooperation of these defendants, or any two of them, involving an understanding between them or any such two of them that such and such things were to be done as occasion might arise, as part of such system of business, and that such system included the intimidating and chasing and returning of foreign and other employees in order to make them work out their indebtedness to the Jackson Lumber Company, and you believe that Laninger was arrested with intent to return him to work out such indebtedness to said company, then you have a right to conclude that there was an understanding between such two or more defendants to arrest Laninger as charged in the indictment. In other words, proof of a general existing understanding on July 23, 1906, that any indebted foreign workmeń of the company, that is, workmen recently arriving from New York, who should run away should be pursued and arrested in order to be returned to work out the indebtedness, would be proof of the alleged conspiracy to arrest Laninger for the same purpose. Although you believe that one of the alleged conspirators may never have known of the existence of Laninger, at the time of his arrest, yet if he participated in such general understanding as stated, he would be guilty of the conspiracy to arrest Laninger.

* * * * *

Where a conspiracy occurs in a foreign jurisdiction and one or more of the conspirators comes in person into this district and within the jurisdiction of this court, and here, in pursuance of the said conspiracy, does the overt act charged in the indictment under which he is being tried, by such transaction such conspiracy is renewed within this district and this court would have cognizance of such crime of conspiracy.

* * * * *

Did Rudolph Laninger owe the Jackson Lumber Company a debt? Had he been held by them to work out that debt? Did he run

> away secretly to prevent the payment of that debt?
>
> Was he arrested by any of these defendants in consequence of a conspiracy or agreement among them, and carried back by force, and against his will, and compelled to work out the debt? If you find all of these things in the affirmative you will be compelled to find the defendants guilty as charged, or any two of them who took part in this conspiracy, if you find one to have been formed between them or any two of them.
>
> On the other hand, if he was merely assaulted; if he did not owe the Jackson Lumber Company a debt; if he was not compelled to go back and compelled to work it out; or if Harlan, Huggins, and Hilton did not conspire to have him do so, then you are to acquit the defendants.

That a system of enforced servitude on the part of contract laborers imported from New York prevailed in the Jackson Lumber Company's camp with Harlan's knowledge and approval appears from his letter of July 24, 1906, to the Pensacola Journal, in reply to an article which had appeared in that paper, entitled "Harrowing Tales of Inhumanity and Cruelty to Foreigners" in the Jackson Lumber Company's logging camps. In that letter Harlan said (R., 293):

> All the men that hired to us in New York, signed contracts, and fully understood everything, and we are carrying out our part of the contract to the letter.
>
> Some of the men who came were of the no-account class, who tried to get away be-

> fore they left New York, merely working for the New York agents so that they would get their employment fee. *These men kept trying to escape after they were here.*
>
> There has been fifteen or twenty out of some two hundred that have left us. We have detained no one against their will *or contract.*

This statement alone is conclusive proof against Harlan that he was aware of and responsible for detaining and compelling men against their will to work for the company because they had entered into contracts to do so; and, being responsible for the system, he was responsible for any arrest or detention made by his employees and agents in pursuance thereof, although he may not have personally participated in such arrest. Counsel tried to explain away the obvious inference of compulsory service and enforced detention to be drawn from these statements of Mr. Harlan, but manifestly the most that could be said for him was that he was doing what he thought he had a right to do under his contracts with these people.

Harlan's personal cooperation in compelling laborers to abide by their contracts with the Jackson Lumber Company is shown in several ways. On July 21, 1906, two men ran away from the lumber camp, and, passing through Laurel Hill, Fla., were seen by a deputy sheriff named Atwell, who immediately sent a telegram to Harlan, who was then at Lockhart, Ala., reading: "Two foreigners here from your camp. Shall I stop them" (R., 229). The testimony of Satterwhite, a clerk in Harlan's office, was that he took this telegram to Harlan, who told him to take it to Mr. Sandor and tell him to answer it to hold them (R., 229–230). Thereupon a telegram was sent to Atwell, signed in Harlan's name, reading: "Hold them. Start at once for Laurel Hill" (R., 230).

John Atwell, sheriff of Walton County, Fla., who sent the above described telegram to Harlan, lived at Laurel Hill. He testified to receiving a telegram (R., 235) telling him to stop two men. This telegram was in reply to one he had sent to Lockhart stating that he had seen two men and inquiring what he should do with them. He took his brother with him part of the way. About 7 miles from Lockhart, toward Pensacola, he overtook the men and said "Good morning" to them (R., 235). There were two men in a buggy about 25 yards to the rear when he spoke to the men. While he was talking Gallagher came up (R., 236) and said they were not the men he was looking for (R., 238). The men seemed scared when Gallagher came up, and started to walk back (R., 239). Witness thought one of them looked like he had a pistol in his pocket, and Gallagher felt down toward the man's pocket, and the man struck at him, and Gallagher kicked the man twice (R., 239). Witness held Gallagher's revolver while the latter kicked the men. Gallagher said he was going back home, and went to his buggy. The men went back on the railroad, and witness talked with the men while they were going up the track. Gallagher was on the road and drove around back of the railroad. Witness told the men that if they were going back they could get in the buggy and ride, which they did. He does not know how far the men rode with Gallagher (R., 240). Gallagher had a buggy and two dogs, looked like bulldogs, very small dogs (R., 242).

Atwell also stated that he had previously been requested on two occasions to look for men (R., 243). The first was a request by Mr. Porter, an employee of the company, to stop two foreigners who had stolen something up at Lockhart. Afterwards saw two men answering to the description, and telegraphed Harlan (R., 244). Gallagher came up with another man and said something about the two men stealing a gold watch (R., 245).

H. M. Stokes, blacksmith at Laurel Hill, testified to seeing Gallagher passing through that place with two foreigners in the buggy with him. Two dogs were trotting on behind the buggy, English terriers (R., 203). One of the men was on behind with some straps (R., 204); had a leather strap around his waist (R., 207).

Julius Rhodes, who lived at Laurel Hill, also testified to seeing Gallagher and another man pass through that place with two foreigners, one in the front part of the buggy and the other in the back part with his feet swinging out; did not know whether the man was tied or not, but it looked like a leather line went over the back of the buggy (R., 215). There were two cur dogs, pretty savage dogs, trotting along with the buggy. At another time saw these dogs trailing a colored man who had committed some crime (R., 219).

David Clary, who lived 4 miles west of Laurel Hill, testified to seeing Gallagher and another man with foreigners in a buggy. One sat in the back part of the buggy, and the other sat down at the foot. Bulldog was with them (R., 220–222).

Doctor Craig, who lived at Laurel Hill, testified that he was with Ewing Reese about July 19 on the road leading from Florala to Laurel Hill, and about a mile and a half from town he saw a foreigner who, when he saw them, turned and went into the woods (R., 429). On his return he met the man again, who was sitting on the rear of a buggy. There were three men in the front part of the buggy, and two hounds running a little ahead of the buggy. The dogs were what is commonly known as bloodhounds, but were foxhounds trained that way, so he supposes (R., 430). He spoke to Gallagher and said, "Hello, Bob; who are you fellows after?" For reply, Gallagher pointed his thumb over his shoulder to the man sitting on the back of the buggy. Witness has seen other parties looking for foreigners around Laurel Hill (R., 431).

Mrs. Paul, who lived near Laurel Hill on the Florala road, saw a foreigner passing the house and two or more men came up on the man near her place. They were running after him. When she looked again they were whipping him. She spoke to the man sitting in the buggy and asked him what was the trouble, and he told her that they were whipping him because he had stolen some clothes (R., 434). One man had a revolver, and the other was whipping the foreigner with a buggy whip. It was a severe whipping. They then went toward Florala (R., 435).

Mrs. Elizabeth Gibson, who lived near Laurel Hill, on July 18 saw a foreigner pass her house and some men overtake him. She saw them whip him, saw them draw a revolver on the man, and heard them whip him. The man threw up his hands and cried. The man who had the pistol took him by the arm and led him up the road. The buggy went toward Florala (R., 437).

In regard to Laninger, the party referred to in the indictment, it appears that a party of about 27 men, some Americans, but mostly foreigners, were employed at the same time, under similar contracts, and were sent by steamer to Savannah, where they were met by Doctor Grace, a representative of the company (R., 170–171, 188, 420), who accompanied them to Lockhart, where they arrived July 20, 21, or 22, Laninger was not sure which (R., 170). The third day after he arrived he was set to work cutting down trees in the turpentine camp (R., 175). Three or four days later he left the camp with two other men and started for Pensacola; got lost; slept in the woods all night, being afraid to go by road for fear the boss and foreman would catch him and take him back. He had seen two Germans brought back two days before (R., 178–179). The party followed the road in the morning until about noon, when they sat down. Presently they heard hoofs of horses coming, and Hilton rode up. They started to run. Hilton pulled out a revolver and called on them to halt. The others escaped. Laninger was stopped. Hilton caught him, made him walk in front of him to a little village, where he turned him over to a blacksmith until after supper. Then the blacksmith brought him to the station, where Hilton turned him over to Huggins, who took him by train to Florala, where Huggins got a buggy and drove him back to Lockhart, where they arrived in the evening (R., 180–183). Huggins took him to the office, or the manager's dwelling, Laninger did not know which. There he was interviewed by Oscar Sandow, who wanted to know why he ran away. *There was another man present, who he thought was Mr. Harlan, although he was not sure.* Huggins then took him to the log camp and into the house, where he spent the night, and the next day Huggins took him back to the turpentine camp (R., 184–185).

Bargonier, a railroad section foreman, who boarded at the Powell House, where Hilton stayed that night, testified that when he came in for supper Hilton was engaged in conversation with two fruit men, and he heard him say that he had been after some men, had lost three of them, and had got one of them and had him under arrest at the depot in the sitting room. He said that the man was running away and owed the company money, and he was going to take him back to Lockhart; that a man was coming up there to carry him back. That evening witness saw the foreigner at the depot (R., 699). He was sitting in the corner, and Kilpatrick was standing in the door with a pistol buckled around him. Kilpatrick told Hilton to take the pistol back and give him some money. Hilton paid him for the supper, and paid him some money, $1.50, he thinks. Kilpatrick handed the pistol to Hilton, who buckled it around him (R., 700).

On two occasions Harlan personally swore out warrants before a justice of the peace in Alabama for the arrest of two contract laborers (Barsota and Krum) who abandoned the services of the Jackson Lumber Company without paying back passage money and other advances. They were thrown into jail, but subsequently released upon agreeing with Harlan to go back to work, Harlan paying costs and having complaint dismissed (R., 369–373). A witness named Donkey testified that after Krum returned from Florala he was passing the office and heard Mr. Harlan say, to tell him if he did not go to work he would put him in jail for three months (R., 398).

The following incidents, with which Harlan was not directly connected, also tend to show that a general system of peonage prevailed in the lumber camp.

Trulich Mahaley (Trudic Mihaly), a Hungarian, who was brought from New York, testified that he arrived at Lockhart on July 18 (R., 420), but did not work any that day, and the next day he left (R., 423). He lost his way, went across some farms, and finally came right opposite Gallagher, Grace, and Sandow. Two of them got out of the buggy, and one of them took hold of him and had in his hand a drawn revolver, while Gallagher whipped him with a horsewhip. Grace kept hold of his arm and he kept going right along by the buggy. As other men were coming, they got him into the buggy, and the three men (R., 424) showed him a revolver and told him not to move or they would shoot him. They took him to Lockhart (R., 425). When they arrived there, there were a number of people standing around who could speak his tongue, and he said he was not going back to the camp. So Grace took hold of him and put him in the buggy, and Gallagher gave him two licks with the whip. There were three dogs with the buggy; did not hear the dogs until after the men got him. He stayed in camp eight days, then went to Pensacola with Newlander, Grace, and Porter (R., 426). Does not remember how many times he was struck. Grace took hold of him with one hand, and in the other hand held a revolver, and Gallagher did the whipping (R., 427).

C. Frank Donkey, an employee of the lumber company, testified to seeing Mahaley struck twice by Gallagher with a long whip, and that Grace then caught him and put him in the wagon and said, "I will give you blue eyes and you will have to go back and work." This he testified was about July 18 or 19 (R. 397), and is evidently the whipping referred to by Mahaley which he received after arrival at Lockhart.

A number of witnesses also testified that while one of the parties of men hired in New York were on their way from Savannah to Lockhart with Gallagher several of them ran away at a station called Fort Valley, went 9 miles to another station, lay down to sleep on the station platform, were brought back by two men whom the witnesses took to be sheriffs, armed with rifles, who gave them the option of going to Lockhart or "to go to the chain gang and fight the contract." They chose the former alternative and went to Lockhart. Gallagher was present on this occasion and told the men "it would cost us something, but if we would behave ourselves it would not cost us anything" (R., 317–318, 329–330, 687, 276, 296).

C. Frank Donkey testified (R., 396) that one day two carpenters came in and told Lamata that two Germans were running away; that Lamata took his gun, went into the kitchen, and told witness he was going to kill him (them?) (R., 399); that the two Germans (?) and the cook followed him (probably Lamata), and about half an hour later they brought back the two Germans. In the evening Sandow came and took the two Germans to Lockhart (R., 400).

G. W. Hudson, deputy United States marshal, testified that he saw Hilton at Laurel Hill in July at Mr. Stokes's store. Hilton came riding up, got down from his horse, and went to the soda fountain. Witness saw Hilton sitting there drinking, and heard him telling about his trip down to Crestview. He heard him say that he went down for some men and found them there, and set the dog on them and ran them down into the swamp and up a tree, and that they were hallooing up there and some people wired to the sheriff of Walton County to come down, and they told him to let the men alone or he would get into trouble. This occurred about July 20 or later, as he, Hudson, had warrants for Gallagher and Grace. Hilton said he let the men alone and did not bother them any more (R., 209–212).

Julius Rhodes, who had a barber shop and soda fountain at Laurel Hill, testified (R., 213) that Hilton passed through that place one morning and asked if any of the foreigners had passed through the day before, and then went toward Crestview, hunting them; and the next morning he returned, but had no one with him. When he returned he told witness that he had "overtaken them about Crestview somewhere, and one of them walked with him down to Powells, down to the boarding house, and talked with him some and told me that he turned around and come back and let (left) these men at Crestview;" that some one had wired the sheriff, who came down and told him not to bother them (R., 213–216).

Manuel Jordman, a Bulgarian, testified, through an interpreter, that he arrived at the camp about June 25, having come from New York. He was at the camp three months, but only worked the first twenty days, being unable to work longer because of injuries received and sickness resulting from an atrocious assault by Gallagher upon him. Gallagher came on him with a pistol and started to beat him on the head and arm and kick him on the leg. He also beat him with a pistol on the breast. Asked if any bosses threatened him or anybody else in his presence, he said, through the interpreter, "Yes; he says it was all around talk of these boys who ran away, he is going to be killed, going to kill him, and kill him, and that is reason he was afraid." He had heard the foreman talking and upon asking was told that he was going to kill for running away (R., 262–267).

GALLAGHER CASE No. 379.

The indictment in this case charged Harlan, Gallagher, and their codefendants with conspiring on July 19, 1906, in the district of Florida, to return divers persons to the grand jurors unknown, employees of and indebted to the Jackson Lumber Company, to a condition of peonage, with intent to compel them to work out the debt. Three overt acts were alleged in furtherance of the conspiracy, namely, the arrest of Trudics Mihaly by Gallagher, Grace, and Sandor in the county of Walton, State of Florida; the arrest of John Doe and Richard Roe (fictitious names) on July 19, 1906, by Gallagher, Sandor, and Atwell in the same State and district, on July 21, 1906, and the arrest of Rudolph Laninger by Hilton, Howell, and Huggins in the same State and district, on July 24, 1906.

The case was tried under instructions from the court similar to those given in the previous case. The testimony on behalf of the Government was substantially the same, except that Laninger did not testify and his arrest was not referred to either in the testimony or the charge of the court. The overt acts in Florida proved by the testimony in this case were the arrest of Trudics Mihaly by Gallagher, Grace, and Sandor, and of the two unknown persons described as John Doe and Richard Roe, by Gallagher, Sandor, and Atwell, the sheriff, at Laurel Hill, both of which are referred to above.

SUMMARY.

The various incidents testified to in both cases certainly tend to show that laborers in the Jackson Lumber Company's camp were compelled to work out their contracts whether they would or not, and were not only threatened and intimidated, but given practical illustration of what would happen to them if they left without doing so. If any doubt existed on the subject, it would be removed by Harlan's letter to the Pensacola Journal, which shows that he knew and approved the practice of compelling laborers to perform their contracts which prevailed in the camp. The testimony showed that he personally swore out warrants for the arrest of two men. His telegram to Sheriff Atwell at Laurel Hill, Fla., to stop the two foreigners who were running away from his camp further illustrates his own attitude in that regard. Having knowledge of the system, himself aiding its enforcement, and as manager of the company having direct superintendence over the work and the men, he was certainly responsible for their actions in carrying out his purposes and desires. It would be absurd to say that his underlings who made the arrests, in accordance with this system, were alone responsible therefor.

It is said that this is a case of great importance, and the court has been asked to overrule, if necessary, all precedents and technicalities for the protection of personal liberty. It is undoubtedly a case of great importance. If the convictions in these cases are set aside, it means that the efforts of the Government for the past five years to suppress peonage in certain portions of the South will be nullified.

The Government is not seeking to sustain the conviction of innocent men. The summary of the evidence above given shows their guilt, morally and legally. It is simply trying to protect the rights of that class of laborers, many of them ignorant foreigners, who are unable to protect themselves.

Respectfully submitted.

William R. Harr,
Assistant Attorney-General.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 378.

W. S. HARLAN, S. E. HUGGINS, AND C. C. HILTON,
APPELLANTS,

vs.

THOMAS H. McGOURIN, MARSHAL, APPELLEE.

No. 379.

ROBERT GALLAGHER ET AL., APPELLANTS.

vs.

THOMAS H. McGOURIN, MARSHAL, APPELLEE.

BRIEF OF WILLIAM W. FLOURNOY, COUNSEL FOR APPELLANTS.

Statement.

These causes above entitled are now before this Court upon Appeals in *habeas corpus* proceedings instituted in the Circuit Court of the Northern District of Florida before Judge THOMAS G. JONES, and also before this Court upon motion for the issuance of a writ of certiorari auxiliary to the writ of *habeas corpus*, and the appellate proceedings taken from the judgment of the Court remanding the appellants to the custody of the marshal. Separate motions for the writ of certiorari auxiliary to the writ of *habeas corpus* are filed.

In July, 1906, affidavits were made against the appellants before the United States commissioner, F. W. Marsh, of Pensacola, in the northern district of Florida, and warrants for the appellants issued. All of the appellants were at the time residents of Lockhart, County of Covington, State of Alabama, but they voluntarily appeared to answer the complaint made against them, resisting, however, at appropriate stages of the proceedings, the authority of the Court over either the person of appellants or the offenses with which they were charged. The trial of appellants was had in the months of November and December, 1906, in the United States Circuit Court at Pensacola, in which appellants were charged with the conspiracy to return one Rudolph Lanninger to a condition of peonage to work for the Jackson Lumber Company, a corporation of and doing business at Lockhart, Ala.; appeal was taken from the decision to the Circuit Court of Appeals, which Court, JUDGE DON A. PARDEE dissenting, but without writing any opinion, affirmed the judgment of the lower court without opinion, JUDGES SHELBY and MCCORMICK concurring; application was then made to the United States Supreme Court for writ of certiorari to the Circuit Court of Appeals to review said causes, which application was denied. Subsequently petition for writ of *habeas corpus* was filed before JUDGE THOMAS G. JONES in the northern district of Florida at Pensacola; the writ of *habeas corpus* was issued, and after hearing the writ was discharged and the prisoners remanded to the custody of the marshal, and from such judgment this appeal is pending.

Throughout the entire course of proceedings the appellants have never sought to evade the process of the Court or to delay a prompt consideration and determination of their causes.

JUDGE JONES in his decision in the *habeas corpus* proceedings said:

"The prisoners during the three years in which the prosecution has been pending have shown no disposition to evade the process of the Court."

At each stage of the proceedings they have endeavored to place before the Court the precise points at issue in order that a *grave error* may be corrected, that their liberty, unlawfully challenged, may be restored. THEY DO NOT ASK CLEMENCY, BUT DO PRAY FOR A THOROUGH REVIEW OF THE RECORD, BELIEVING THAT SUCH REVIEW WILL SHOW TO THE COURT AN UNCONSTITUTIONAL TRIAL AND CONVICTION, PROCEEDINGS BEYOND THE JURISDICTION OF THE TRIAL COURT, AND AN UTTER LACK OF EVIDENCE TO PROVE THE SPECIFIC CHARGE AGAINST THEM.

With this review we believe that the result will be as in the case of Clyatt *vs.* United States, 197 U. S., 222, in which the Court held that there was NO EVIDENCE, and by this Court Clyatt was restored to his liberty, although the three judges of the Circuit Court of Appeals agree upon the facts (here one of them says there are no facts to prove the charge), and that the grave mistake now about to be made final, by possibly the one technicality that this Court is without jurisdiction to review, may be corrected. No such rule should or can prevail when *personal liberty, truth* and *justice* is sought to be preserved and established.

There are eight assignments of error, to-wit:

1. That the Court erred in dismissing the writ.

2. The Court erred in remanding the prisoners to the custody of the marshal of the United States for the northern district of Florida.

3. The Court erred in refusing to discharge the prisoners from custody.

4. The Court erred in holding that the term of the United States Court for the Northern District of Florida, at which the petitioners were convicted and sentenced, was a legal term of court.

5. The Court erred in finding that the indictment upon which the petitioners were tried and convicted, was found by a grand jury of the Circuit Court.

6. The Court erred in holding that the bill of exceptions in the main suit was no part of the record and that the same could not be re-examined in *habeas corpus* proceedings.

7. The Court erred in holding that the minutes of the Circuit Court showed record entry that the indictment was returned and presented by the grand jury in open court.

8. The Court erred in amending the sentence by striking out the words "hard labor."

ARGUMENT.

Assignments numbers 1, 2 and 3, we will argue together and discuss assignments 4 to 8, both inclusive, separately in the order stated. We will discuss first the general rules governing the issuance and relief to be granted by the writs of *habeas corpus* and certiorari.

In advance, may we suggest to this Honorable Court that these cases of the appellants merit the most careful consideration. These are not ordinary cases. Special counsel, both men and women, and special detectives, have been employed by the Government in their prosecution. No recent case has caused the people of Florida and Alabama and the whole South so much concern. The Government spared itself no means or expense to secure the conviction and to prevent its reversal. The inspection of the evidence will show, we respectfully submit, an unfair trial, an arbitrary invasion and violation of constitutional rights, which, even at the expense of making an exception to the rule, ought to be condemned. The conditions of no case could possibly more justly demand the careful consideration of this Court, and if the general rule of this Court governing the issuance of these writs of *habeas corpus* and *certiorari* may seem to forbid relief in these cases, then if there can possibly be a state of facts favorable to making an exception to the general rule, the facts shown by the record in these cases now submitted meet such condition. In our opinion a great wrong has been done the appellants; they are not only innocent of the charge against them, but also the dignity and character of the administration of justice in the judiciary is at stake and has been invaded. If the record shows facts which we contend that it does, clearly, then the appellants have not been given a fair and impartial trial, but also were tried by a court not lawfully authorized and by a court not within the district in which the alleged offense was committed, and *convicted without any evidence whatever to sustain the charge against them.* If the suit involved questions of a civil nature between individuals, the facts submitted in this case, the conditions leading up to and during the trial as shown by the record, would warrant an exception to the general rule; and certainly where the case, as it is, is between the great Government of the United States, whose duty alone is to secure the administration of justice to its citizens, then there should not only not be any resistance, but a joint request for a re-examination of the record to see whether or not there has been a conviction by due process of law—whether or not the orderly administration of justice is done. This case does not involve mere *property rights* or *pecuniary value,* but the priceless heritage of liberty to protect and preserve which is the sole purpose of our American institutions. What injury then can be done the Government to allow an examination of the entire record in these cases, so that this Honorable Court, in which the appellants have the last chance to secure a review of what they insist is an unlawful and unconstitutional conviction shall be declared void, that their liberty may be restored. If to review the proceedings an exception to the rule is necessary, then the exception in this instance by the facts is warranted. If the review results adverse to the appellants, the Government will not only not be injured, but will be honored by giving to the citizen the consciousness of knowing that he has been permitted to have an inspection and review by the last and final tribunal, save One. As was said by Mr. Justice Bradley in *Ex parte* Siebold (100 7th U. S., 371; 25th Law Edition, 719) after referring to the general rule:

> "But *personal liberty* is of so great moment in the eye of the law that the judgment of an inferior court affecting it is not deemed so conclusive but that, as we have seen, the question of the court's authority to try and imprison the party may be reviewed on *habeas corpus* by a superior court or judge having authority to award the writ."

And as was said by Mr. Justice Miller in *Ex parte* Lange (18th Wallace, 163; 21st Law Edition):

> "To perpetuate this wise rule so favorable and necessary to the *liberty* of the citizens in a government like ours, so frequently subject to changes in popular feeling and sentiment, was the design of introducing into our Constitution the clause in question."

Habeas corpus is the proper remedy. Where the record shows lack of jurisdiction, or when a person is held under the judgment of the court made without authority of law, the proper tribunal will issue a writ of *habeas corpus* to examine the record so far as is necessary to ascertain that fact, and if it is found to be so will discharge the prisoner. Such was expressly held by this Court in the cases of *In re* Snow, 120 U. S., 274; 30th Law Edition, 658. *Ex parte* Lange, 85 U. S., 18 Wallace, 163; *Ex parte* Milligan, 71

U. S., 4th Wallace, 2; 18th Law Edition, 281. And we believe this general rule is conceded by all the authorities. The difficulty arises in making the application as to what is such an error of judgment as amounts not merely to error of law, but deprives the party of one of his rights guaranteed by the Constitution. A vital question to be determined, also, is what is the *record*, and can a bill of exceptions which has been made a part of the record by the certificate of the trial judge, and considered in *habeas corpus* proceedings by the trial judge be resorted to or referred to, to show *want* of jurisdiction or *loss* of jurisdiction, or absence of authority to render the particular judgment? It will be conceded that the court must have by the late authorities, *first*, jurisdiction of the person; *second*, jurisdiction of the cause or offense, and, *third*, authority to render the particular judgment. All of these elements are essential to constitute a valid judgment due process of law, without which it is *not mere error*, but is such deprivation of constitutional rights as defeats jurisdiction, relief against which should and will be guaranteed by *habeas corpus*. We think that the reason and analysis, if not positive authority, and if not these, then that the *truth of the facts*, that *justice* may be established, that *liberty* may be guarded and the constitutional rights, the dignity, and the verity of the judiciary and the administration of justice preserved, demand reference to and the use of the bill of exceptions to ascertain whether or not the trial court had jurisdiction of: *first*, the person; *second*, the subject-matter; *third*, to render the particular judgment. It will be contended by the Government in these cases that the trial court, by reason of the allegation in the indictment, had jurisdiction of the offense alleged; that is true, but only of the *offense alleged*, and not of some foreign offense, notice of which was in no way suggested by the allegations); and that under the statute is had jurisdiction of the person. If we concede this contention, the jurisdiction of the court is not still complete, because the third element is lacking. If the Government made a *false allegation* of the offense and of its formation for the sake of getting jurisdiction, of course, temporarily and *prima, facie* at least, the court had jurisdiction of the offense alleged; and temporarily also had jurisdiction of the person when the person voluntarily submitted himself, though under protest, to the jurisdiction of the court. But *the moment* the Government failed to offer to prove the specific charge alleged, the moment evidence showed to a mathematical demonstration that no such alleged conspiracy existed, then under the constitutional guaranties that a party should be put upon notice of the crime with which he is charged, and that a party shall be tried only in the district in which the crime was committed, should have been made effective by the immediate dismissal of the prosecution and continuation of which was in excess of jurisdiction, because it violated these constitutional guaranties and rendered the decision illegal and void, the court at the particular instant not having the authority to render the *particular judgment.* These three elements above stated are essential; otherwise, if either of them is violated, *habeas corpus* is not only the *appropriate,* but the *only adequate remedy.* Such was the contention in this Court of the Attorney-General in the case of *Ex parte* Snow (20 U. S., 274; 30th Law Edition, 659), when there the Attorney-General contended that the Court in deciding upon the plea of former conviction by Snow had jurisdiction over the offense and jurisdiction to decide the question of the identity of the offense charged against Snow; that the jurisdiction of the offense necessarily carried with it the power to try and to determine every matter that might be urged in bar of an indictment charging such an offense, and, therefore, *habeas corpus* not to be allowed, and that such propositions were not open to doubt. Such a contention is a parallel to that of the Government in the instant case. The Government against *Snow* contended that the fact that the indictment alleged an offense over which the trial court had jurisdiction gave the trial court jurisdiction, and that the determination of whether or not the offense charged was *one* and the same or separate was the ordinary judgment to be rendered in the trial of the cause, from which only appeal or writ of error would lie. Yet Mr. Justice Bradley held that the decision upon the plea of former conviction holding adverse to the plea *was not mere error of law,* but was such an error, assuming to continue jurisdiction, did effectively deprive *Snow* of his constitutional right to be convicted only once for the same offense. So with the appellants in the case at bar. When the specific charge in the indictment was not proven, or when the evidence showed that the conspiracy, if at all, was formed and entered into in the State of Alabama, then the trial court should, as determined by this Court in the case of Snow, have immediately discharged the defendants (these appellants), and its refusal to do so was equally as flagrant a violation of the constitutional rights of the appellants as was the action of the trial court in the case of *Re* Snow, *Ex parte* Nielson, *Ex parte* Siebold, and *Ex parte* Lange. Hence the remedy sought by *habeas corpus* for the appellants is at once the appropriate remedy, and the relief prayed for ought to have been granted.

The indictment alleges a conspiracy formed and entered into in Florida, but nowhere in the bill of exceptions is there any proof, or even effort to prove this averment which was indispensable to give the trial court jurisdiction. That such averment is essential for such purpose is so held by Mr. Justice Brown, and in the dissenting opinion by Mr. Justice Peckham in the case of Hyde *vs.* Shine, and if it was so made and a necessary averment, *without which the Court would have had no jurisdiction,* then proof of that fact is indispensable, without which jurisdiction to continue in the proceedings *was lost,* and further action by the Court was clearly in excess of authority; hence, *habeas corpus* is the only appropriate and adequate remedy for these appellants.

There is no proof or effort to prove a conspiracy at all, either within the State of Florida as alleged in the indictment, or elsewhere. All of the proof is directed toward the motion of an overt act and evidence of different altercations at sundry places, but nowhere is there any effort to prove either the *specific conspiracy alleged,* or the *place where* it or any other conspiracy was formed and entered into. The trial court did not follow the rule, that prima facia evidence of conspiracy must first be shown before evidence of overt acts are admissible. This probably is the prime cause leading the Government in directing all of its attention to the alleged overt acts and neglecting to prove the conspiracy itself. Order of proof was in the discretion of the Court, but lack of following it up made lack of proof a fatal defect.

The basis of this indictment is the arrest and return of a particular person for two specific intents, viz., (1) to return Rudolph Lanninger to a condition of peonage; (2) that he be held in a condition of peonage. The Government, under the facts submitted to it, had a right to go to trial upon such allegation of facts as to it seemed warranted; and as an alternative right on the part of the defendants they had a right to assume that the Government had selected the offense which it desired to prosecute, and that the indictment was notice to them of such particular offense. Under the Federal Constitution the accused are given the right to have notice of the offense or offenses upon which they are to be tried, and in this instance the notice was the indictment; and it is but fundamental that the Government was bound to limit its evidence to the *specific* allegations; and evidence tending to show other facts, or that there was a general conspiracy, was not only not admissible, but, for violation of this constitutional provision, was reversible error. If citations of authorities are needed to support this proposition, we submit that the precise question was determined in the following cases:

Commonwealth *vs.* Harley, 7 Metcalf (Massachusetts), 506; text, 509.

Rabens *vs.* United States, 146 Federal Reporter, 978.

In the case of Harley, under an indictment for an intent to defraud S., it was held admissible to show that there was an intent to defraud the public generally; and in the case of Rabens, decided by Justice Pritchard, of the third circuit, it was held that an indictment specifically charging an intent to rob the post office at L. would not be sustained by proof of an intent to rob post offices generally, and the admission of such testimony was reversible error, and upon this point alone the cases were reversed.

The Government pleaded that the *conspiracy* was one formed and entered into in the *county of Walton, State of Florida.* This averment was essential, without which the said Circuit Court would have had no jurisdiction. And, it being essential, it is but fundamental that it must be proved as laid; otherwise it would constitute a fatal variance. This was expressly held by Mr. Justice White, of this Court, in his dissenting opinion in the case of Hyde *vs* Shine, 199 U. S., text 86. (See also 22nd Encyclopedia of Pleading and Practice, 569 and 812, and Phillips *vs.* Beene, 16 Alabama, 720.)

Thompson *vs.* State, 106 Ala., 68.

In Thompson *vs.* State, *supra,* Chief Justice Brickell in his opinion held that if the conspiracy was alleged to have been committed in one county it must be proved, and that proof that it was formed in another county would constitute a fatal variance * * * and that "the place at which it is intended to commit the felony is not material; it is the *law* of the *place* where the *conspiracy was formed which is broken*" (text, 79).

Any variance which destroys the legal identity of the matter or thing averred with the matter or thing proved is fatal, and where the place is of a fact material to be averred it must be established by proof (authorities *supra*).

The indictment alleges, *the purpose of which was to give the court jurisdiction,* that the conspiracy was formed in the *county of Walton, State of Florida.* It does not allege that the conspiracy was formed in the State of Alabama, and that pursuant thereto, and to effect the object thereof, overt acts were committed in Florida. The Government was not warranted in assuming that it would be sufficient to lay the venue in Walton county, Florida, under the *fiction*, as indulged in by some of the *State* courts, that the doing of the *overt act continued or renewed* the conspiracy as to all the parties connected therewith. It is not sufficient to charge conspiracy or any other crime as a conclusion; and whether the conspiracy was *renewed* or *continued* by *mere fiction* was for the court to determine upon inspection of facts which must be in the indictment. And the Government is not permitted to embarrass or surprise the defendants by such averments which are or may be proven to be inconsistent with the facts, merely in pursuance of its conception of the supposed fiction.

Article VI of the Federal Constitution provides that the accused shall be informed of the crime with which he is charged, and if this provision means anything and is to be made effective, it means that the indictment shall correctly put him on notice, not of the *conclusion* of the pleader, but of the *actual facts* and circumstances upon which the Government will rely. As was said in Miller *vs.* United States, 133 Federal Reporter, 341, "the indictment must clearly disclose the facts upon which the charge of the commission of the offense is based."

An innocent person (and he is presumed to be both innocent and ignorant of the facts) charged with the commission of the crime of conspiracy in a particular State or district is not supposed to anticipate that the Government wil rely upon some *overt act* committed there, and then be a liberty to offer evidence that the *conspiracy* was actuall formed in another State. Can it be reasonably suppose that an innocent man residing in the State of Alabama, indicted for the crime of conspiracy in the State of Florida is thereby placed upon notice that the Government will offer testimony to show that the conspiracy was formed in any foreign State which the Government might select other than that named in the indictment? Is it possible that the Government can allege that the conspiracy was formed in a particular State, and maintain such averment by proof of a conspiracy in some foreign State? Is it possible for the Government to be at liberty to charge the formation of a conspiracy in a particular State or district, *when such allegation is necessary to get jurisdiction,* and then be permitted to show that the conspiracy was actually formed in a different State from that where venue was laid, simply because some *overt act* is committed in the State or district in which the Government might have supposed the conspiracy charged was formed? An innocent man might be prepared to show that he never was in the State where the conspiracy is charged to have been formed; but, to his surprise, the Gvernment may offer testimony of a conspiracy formed in some far distant State, within whose borders he has never been, which testimony may raise merely a presumption, but which he is utterly unable to meet on account of the failure of the indictment to advise him of the exact charge against him. The indictment having alleged that the conspiracy was formed in Walton County, Florida, when, as stated by Mr. Justice White (199 U. S., 86), such was essential to give jurisdiction, we think clearly that no testimony should have been admitted except such as pointed to the formation of a conspiracy in the State of Florida.

We assert most positively that there is not a scintilla of evidence, nor the slightest attempt, to show that any conspiracy was formed in the State of Florida as alleged; and the Government can rest its defense of this assertion only upon the mere fiction, as indulged in by some of the *State* courts and one Federal District Court, that the conspiracy was renewed or continued as to all where one of the parties committed an overt act.

This court has not expressly determined, though we think it has by inference, the question of whether or not persons proceeded against criminally for engaging in a conspiracy in violation of section 5440 of the Revised Statutes of the United States can be tried in a district other than that in which the conspiracy itself was formed and entered into; that is, stated otherwise, can the offense of conspiracy and the parties forming the same be tried in a State in which one of the parties commits an overt act in furtherance of the object of the conspiracy, when the conspiracy itself was formed and entered into in another State? Nor expressly determined the question whether or not the parties charged with the crime of conspiracy can be indicted and tried in a State in which one of the parties committed an overt act in pursuance of such conspiracy, when neither of the other conspirators were ever in that State.

This court has determined that the gist of the offense was the conspiracy itself; that the overt act was no part of the conspiracy, and was only the *locus penitentiæ*.

Britton *vs.* United States, 108 U. S., 192.
Dealy *vs.* U. S., 152 U. S., 539.

And in Hyde *vs.* Shine the majority opinion of the court held that while this question was before it "it becomes unnecessary to consider whether an indictment will lie within the jurisdiction where the overt act was committed, though there are many authorities to that effect" (citing authorities; 199 U. S., text 76). But in this case Mr. Justice WHITE, in his dissenting opinion (text, 87), speaking of the right of the defendant to the writ of certiorari and of the right to have the question of probable cause investigated, said:

> "The indictment avers that the conspiracy was entered into in Washington, District of Columbia; and the opinion holds in substance (and rightly, as I think) that it is essential to aver its formation in the District in order to give the courts therein jurisdiction of the offense. * * * The right is none

> the less, when want of probable cause rests upon conclusive evidence of the absence of the defendants from the District at the time when the indictment alleges the conspiracy was formed in such District. *If defendants were not then there, they could not be guilty of the crime charged in the indictment.* This case is an extreme illustration of the very great hardship involved in sending a man three thousand miles across the continent, from California or Oregon, to this District for trial, where he is to bring his witnesses, and where on such trial it will appear that the court must direct an acquittal, because the averment of the formation of the conspiracy at Washington, D. C., is shown to be false to a demonstration."

It is true this quotation is from the dissenting opinoin, but the analysis in his statement, that "if defendants were not then there they could not be guilty of the crime charged in the indictment," does not conflict with the majority opinion, because the majority opinion stated that it was not necessary to determine the question whether or not a party could be tried for conspiracy where the overt act was committed if the conspiracy itself was formed in a foreign jurisdiction. And in the case of Dealy *vs.* United States we think the view of this court is by inference given that parties charged with the commission of a conspiracy can be tried and indicted only in the district in which the conspiracy itself was formed. In that case it was held that the conspiracy itself was the gist of the offense, that it could be tried in the district where formed and entered into, and that the *overt act* could be committed anywhere, even in a foreign country. This expressly holds that the situs for indictment and trial for such crime is the place of the formation of the conspiracy. The venue of the criminal action cannot be in two places. The overt act is not a part of the crime. Is it not, therefore, certainly demonstrated that parties charged with the crime of conspiracy can neither be indicted nor tried in a jurisdiction other than that in which the conspiracy itself was formed and entered into, and cannot be tried in a jurisdiction in which merely an overt act was committed?

True, some of the State courts and one Federal District Court have held adversely to this contention. But they place their reasoning and decision upon the *fiction* that the overt act is a *renewal* or *continuance* of the offense. Under the language of the statute, section 5440, we do not think any such fiction or construction is warranted.

It is not, "How many cases have been or what courts have decided in support of any such fiction or other matter?" But the main question to be determined is, "Upon what principle were they decided?"

The *vital questions*, irrespective of the relevancy of the evidence, submitted to this court upon this application, are:

(1) Can persons proceeded against criminally for engaging in a conspiracy in violation of section 5440 and section 5526 of the Revised Statutes of the United States be indicted and tried in a district other than that in which the crime of conspiracy was formed and entered into?

(2) Can the parties charged with the offense of conspiracy be indicted or tried for conspiracy in another State than that in which the conspiracy was formed and entered into, upon the ground that jurisdiction can be taken of all in any State in which any one of the conspirators commits an overt act in furtherance of the object of the conspiracy?

(3) Does jurisdiction attach or exist where the overt act was committed, if the *conspiracy itself* was formed in another State?

(4) Does jurisdiction attach or exist where the overt act was committed for the trial of those conspirators who were never in the State in which the overt act was committed?

(5) Where the indictment charges that the conspirators formed and entered into the conspiracy with a specific intent and particular purpose to return a particular single

individual to a condition of peonage, will such allegation be supported by proof of a conspiracy to arrest and return persons in general? And was not the introduction of testimony which might tend to show a conspiracy of a general nature reversible error?

(6) Where the indictment charges that the conspiracy was formed and entered into within a particular State and jurisdiction, will such averment be supported by proof of the formation of a conspiracy in a foreign State or jurisdiction?

(7) Before there can be a violation of section 5526—that is, before there can be a condition of peonage—is it not essential that there must be a *debt?* and is it not a prerequisite that the indictment must allege that there was a debt, and not simply that there was a "debt alleged to be due" or "claimed to be due"?

(8) Where the indictment alleges that the arrest and returning was for the purpose of compelling the party returned to labor against his will to liquidate a "debt alleged to be due," if such averment may be held sufficient (that is, if the indictment will be sustained whether it is a debt or an alleged indebtedness), will not such indictment fall when the proof shows (as it does beyond cavil in the instant case) that the party returned claimed to be the creditor of the person to whom he was returned?

We think that the above propositions one to six should be answered in the negative, and seven and eight in the affirmative. The law and reason upon these eight propositions we will discuss further in a subsequent division of this brief.

The record shows certificate of the trial judge that it contains *all of the evidence.* This certificate, therefore, gives solemnity to the Bill of Exceptions and makes it a part of the record. And we insist that if reference thereto shows an *absolute lack* of proof of the jurisdictional averment of the Florida conspiracy, then the court had no jurisdiction to proceed further and should have discharged the defendants.

12 "Cyc.," 838.
Alexander *vs.* State, 3 Heish (Tenn.), 475.
Mayes *vs.* State, 3 Heisk (Tenn.), 430.
Wesley *vs.* State, 52 Ala., 182.
13 Enc. of Ev., 929.

Allegations of conspiracy formed in one county will not be supported by proof of conspiracy formed in another county.

Thompson *vs.* State, 106 Ala., 68.
22 Enc. of P. & P., 569 & 812.
Phillips *vs.* Beene, 16 Ala., 720.

And the same doctrine was established by Justice White, of the United States Supreme Court, in the dissenting opinion of Hyde *vs.* Shine, 199 U. S., text, 86.

Justice Brickle, in Thompson *vs* State, *supra,* held that an allegation of conspiracy in one county is not supported by proof of conspiracy in another county and that the place at which it was contemplated to commit a felony was not material, but that it was the *law* of the *place where the conspiracy itself was formed that was broken.* (106 Ala., text 79.) These authorities go upon the doctrine that any variance which destroys the legal identity, the *essential jurisdictional averment,* of the matter or thing averred with the matter or thing provided is fatal *and where the place* is a *fact material to be averred,* it *must be established by proof.* Article six of the Federal Constitution provides that the accused shall be informed of the crime with which he is charged, which proven to be made effective demands that the indictment shall correctly give notice not by *conclusion* of the parties but by *statement of actual facts and circumstances* upon which the *Government* will rely.

Miller *vs.* U. S., 133 Fed. Rep., 341.

No one would seriously contend that an allegation of an indictment of the particular place would be notice of any intention of the Government to rely in its prosecutions upon facts which might show a conspiracy formed in a different State and, therefore, if the record shows, which we assert positively that it does not, a conspiracy formed in Alabama, it would not sustain the indictment and we contend, also, that if the record so shows, the moment it was made apparent to the court it should have proceeded no further and immediately discharged the defendants, and its failure so to do is not mere error against which the remedy of *habeas corpus* will not lie, *but it is such an error as violates the constitutional guaranty and deprives the Court of any further jurisdiction to proceed.* Otherwise the writ of *habeas corpus,* so sacred for the preservation of the liberty embodied in every Constitution of a republic since the Magna Charta, would become obsolete and persons illegally restrained of their liberties would be confined to the slow inadequate appellate procedure. The Constitution guaranties that a party charged with criminal offense shall be put upon notice. For the Court to hold that the Government could introduce evidence of a conspiracy formed in a foreign jurisdiction from that alleged in the indictment would be clearly an arbitrary ruling, would directly nullify this constitutional guaranty and would render the Court proceeding in a *matter prohibited* by the Constitution, and we contend this analysis is not only clear but is in harmony with the decision following.

The Constitution of the United States, Article Three, Section Two, and Sixth Amendment, guaranties, also, that a person charged with a criminal offense shall be indicted and tried only in the District and State where the offense was committed.

In this case the allegation is that the conspiracy was formed and entered into in Florida. *There is no effort to prove this allegation,* or even any effort to prove that a conspiracy was formed anywhere, the proof being confined to various conduct of sundry individuals in no way connected with the *conspiracy itself,* or in any way proving venue. This was insisted upon in behalf of defendants, both in the trial Court and in the Appellate Court and in every appropriate place in his proceedings.

It may now be contended that the decision of the Appellate Court thus ruling is final and he is left without a remedy, because the indictment alleges a *Florida conspiracy over* which the trial Court had jurisdiction and with said jurisdiction of the person, therefore, errors afterward made were mere errors of law, or errors of judgment, and although there is no proof in the record of the conspiracy itself, or of the place of its formation, the defendants are remediless. This conclusion may be conceded with the dicta of the decisions but not with *Exparte* Lange, Nielson, Snow or Siebold, it is repulsive to the instincts of an American. When there was *no evidence* or that which tended to prove the *conspiracy alleged,* or its venue, the Court then was without authority to proceed and ought to have discharged the defendants and its failure so to do was not mere error, but it was proceeding without jurisdiction. Of course, it might permit the Government to put on evidence under its promise to connect it with conspiracy charged, but not otherwise, and its failure to discharge the defendants in the absence of proof either of the jurisdiction of the conspiracy or of its place of formation, was a lack of enforcing that which the Constitution guaranteed, namely, the privilege of the defendant to be tried and indicted only in the district in which the offense was committed and that proof of that fact is a constitutional guaranty, otherwise we have the anomaly of a conviction upon a *mere allegation.* Under such practice the Government could allege jurisdiction anywhere and could *deliberately* and *intentionally decline* to put on evidence of such allegation and the Court could intentionally, or otherwise, over-rule the applications in behalf of the defendants relative thereto and the Appellate Court could intentionally or otherwise fail to notice the defendants' application for the protection of his constitutional guaranty, after which the defendants, under such condition and practice, would be remediless, but certainly this is not consistent with either reason or the proper practice to secure adherence to constitutional guaranties and privileges. *Habeas corpus* is the adequate and forceful remedy in such case.

In Mayes *vs.* State, *supra* (3 Heisk. (Tenn.), 429), the Statute of Tennessee sought to prevent reversal of judgment because the bill of exceptions omitted to state that the venue was proven, it was held that such Statute was *unconstitutional* because it violated the provision of the Constitution, which guarantees that a person charged with a criminal offense can be tried and indicted only in the district where it was committed.

And in Alexander *vs.* State, *supra,* it was insisted in behalf of the defendants that the Bill of Exceptions failed to show that the offense was committed in the county of the trial Court and for that reason a new trial ought to have been granted. This is precisely the case at issue here; namely, we contend that the Bill of Exceptions, made by the certificate of the trial judge a part of the record and over his certificate, *certifying that it contained all of the evidence,* but that the conspiracy itself is not proven or tended to be proven, nor is the place of any conspiracy proven. By the Government against Alexander, it was contended that the *Statute* of Tennessee precluded the reversal of a judgment because of *lack of proof of venue* and that the presumption was that the venue was proven. In answer to which contention, Justice Nicholson said:

> "But when the record comes to us properly authenticated and the judge below certifies that all testimony given on the trial is contained in the bill of exceptions, we are unable to comprehend the

> principle upon which we can presume arbitrarily that the record is false, and that, in fact the venue was proven, and that it was omitted by inadvertence or negligence, although the judge below has certified that no such proof was made. The legislature could not have intended to require such a construction to be placed upon their action. If they did, they made an enactment not authorized by the Constitution."

In the above case of Alexander, much evidence was introduced in connection with the murder, but it was not shown positively whether it was in the City of Nashville or in the City of Chattanooga. Therefore, under the Constitutional guaranty, the Court had no right to *pronounce the sentence*—it, in doing so, came to the limit of its authority in the absence of proof of venue. There was proof of the killing, but not of the *place* of the killing and, therefore, a *lack of proof* of *the essential averment.*

And in the case of Harlan *et al., now before us,* there is much evidence of sundry acts, *but no evidence* of the essential averment of either the *conspiracy itself* or *place of its formation,* without which there is not simply merely error in judgment, but *lack of evidence* and *lack of evidence causes lack of jurisdiction to further proceed.* In this case it is true the reviewal was had in the Appellate Court, but the reasoning of the Appellate Court was that such a trial was constitutional and the statute which authorized them to sustain a verdict below, notwithstanding the fact that the *Bill of Exceptions* showed want of proof of venue was constitutional, hence it is applicable to our analysis sustaining our contention. If the Court then had no jurisdiction to proceed further, its action subsequently could be reviewed by *habeas corpus.*

Taylor on Juris. & Pro. of U. S. Sup. Ct., 478.

In re Neilsen, 131 U. S., 184; 33 L. E., 121; 9 Sup. Ct. Rep., 672.

In re Bonner, 151 U. S., 256; 38 L. E., 152; 14 Sup. Ct. Rep., 323.
Ex parte Lange, 18 Wall., 163.
Ex parte Siebold, 100 U. S., 371.
Ex parte Parks, 93 U. S., 18.
Ex parte Kerney, 7 Wheat., 38.
Ex parte Wells, 18 Howard, 307.
Ex parte Curtis, 106 U. S., 371.
Ex parte Carl, 106 U. S., 521.
Ex parte Cranch, 112 U. S., 178.
Ex parte Bigelow, 113 U. S., 328.
In re Coy, 127 U. S., 731.

In re Nielson, *supra,* Nielson was charged with separate offenses, but upon conviction of one plead to the other former conviction. The trial court then had the burden of deciding whether or not the *two offenses* were the same; if so, then the second, under the constitutional guaranty that a party should not be tried twice for the offense, must be *nolle prosequi.* If not, then the trial as to the *second would continue,* and which with Nielson was the order. Was this mere error of law? No. It was such error as violated the *third element* above suggested, and rendered the order void, because of being in excess of authority of the court to further proceed. Mr. Justice BRADLEY, in rendering decision, held the latter, and that *habeas corpus* was the appropriate remedy. Hasty, superficial reasoning would lead us to the conclusion that any error made in disposing of a plea of former conviction would be *mere error of law,* to be corrected *only by appellate proceedings,* but such is easily observed to be erroneous analysis, and as was held by Mr. Justice BRADLEY, *such error became more than mere error of law,* since it invaded the constitutional rights of the party, and, therefore, in such instance, the error, *called error for the lack of a stronger word,* vitiated the proceedings and brought into use the very wholesome writ of *habeas* *corpus.* And such trial also in the case of Nielson suggested the analysis of Mr. Justice BRADLEY further, that "It is difficult to see why a conviction and punishment under an unconstitutional statute is more violative of a person's constitutional rights than an *unconstitutional conviction* and punishment under a valid law. In the first case it is true the court has no authority to take cognizance of the case; but in the other case it has no authority to render the particular judgment against the defendant, * * * AND WHERE SUCH CASE APPEARS ON THE RECORD THE PARTY IS ENTITLED TO BE DISCHARGED FROM IMPRISONMENT."

In re Snow, *supra,* there were three separate convictions on three separate indictments, and the Government, through its Attorney-General, strongly insisted in the proceedings by Snow in *habeas corpus,* that the averments in the indictments were sufficient to and did allege an offense over which the trial court had jurisdiction, and that the application by Snow for relief by *habeas corpus* could not be granted; yet this Court held, by MR. JUSTICE BLATCHFORD, that *habeas corpus* was the appropriate remedy because such error forcing a party to a second trial for the same offense was a violation of the constitutional guaranty. Similar, by analogy, is the case at bar, forcing the appellants to be tried in Pensacola outside of the *situs* of the commission or formation of the offense, if committed at all, was a violation of their constitutional guaranty to be tried only where the offense was committed.

In Tinsley *vs.* Treat, 205, U. S., 20, by MR. CHIEF JUSTICE FULLER, the same principles were held to be governing in the issuance of the writ of *habeas corpus* and *certiorari.* The Attorney-General for the Government contended in that case that the commissioner and the district judge who acted upon the removal proceedings for Tinsley had jurisdiction; *first,* of the subject-matter; *second,* of the person, and had decided the questions involved against the petitioner, Tinsley, and that *habeas corpus* could not be allowed to review the proceedings; yet this Court, by MR. CHIEF JUSTICE FULLER, held that *habeas corpus* was the proper remedy in behalf of Tinsley because the trial judge had declined to allow the introduction of evidence to show *lack of probable cause,* and in the dissenting opinion in the case of Hyde *vs.* Shine, by MR. JUSTICE PECKHAM, with whom Messrs. JUSTICES WHITE and MCKENNA concurred, it was stated that *"The fact that Hyde was not then in the district was conclusive evidence that he was not a party to the conspiracy."* So with the appellant, Harlan, in the case at bar. From the record, evidence will show that he was not then in Florida. Besides, at the trial it was insisted upon and conceded by the Government, *not as alleged in the indictment,* a *conspiracy of Florida,* but that the conspiracy itself was formed and entered into in Alabama, and that only an overt act by Hilton, one of the alleged co-conspirators was done within Florida. FURTHERMORE, THE RECORD SHOWS BEYOND CAVIL THAT THE APPELLANT, HARLAN, NEVER KNEW HILTON OR HUGGINS, NEVER KNEW THAT EITHER OF THEM WERE AT WORK FOR THE JACKSON LUMBER COMPANY AND NEVER HAD ANY CONNECTION WITH EITHER OF THEM, DIRECTLY OR INDIRECTLY, PRIOR TO THE TIME OF THE ALLEGED CONSPIRACY OR PRIOR TO THE TIME OF THE ALLEGED ARREST AND RETURN OF LANNINGER. SUCH CONDITION, EQUALLY WITH THE CONDITION SUGGESTED IN THE CASE OF HYDE VS. SHINE, WAS CONCLUSIVE EVIDENCE THAE HE COULD NOT HAVE BEEN ONE OF THE CO-CONSPIRATORS AS ALLEGED IN THE INDICTMENT.

In view of the authorities, *supra,* the principles therein announced, when applied to the facts in the case, the errors assigned numbers 1, 2 and 3, are well taken, and the Court should, upon consideration thereof, have discharged the defendants and its refusing to do so was error which this Court will reverse.

FOURTH ASSIGNMENT OF ERROR.

The court erred in holding that the term of United States Court for the Northern District of Florida, at which the petitioners were convicted and sentenced, was a legal term of the court.

The record will show that there was practically no business in the court after the regular term of March, 1906, until November, 1906 (T. R., 78-130). The clerk of the court as a mere "makeshift" for keeping the minutes of the court used two rubber stamps in two parts, one for use when the judge was present in the city and the other for use when the judge was absent (T. R., 24), and often it was as much as *sixty days* before the record of the court which the clerk would have us *dignify* by the name of *minutes* was written (T. R., 49). But even this was not necessary, because *there was no business*. In order to avoid extra labor in such press of work in writing a repetition of the matter contained in the *rubber stamp,* which merely certified to a *fiction,* and *in reality an untruth,* the clerk used the rubber stamp, contending, however, that such opening and adjourning of court was authorized under rule 13 (T. R., 84), which rule was prepared doubtless in advance for the purpose of giving visionary authority to this *fiction of opening and adjourning court.* The testimony of both the clerk and the deputy clerk shows that these records were often prepared from thirty to sixty days after the date upon which the rubber stamp certified that the court was *opened* and adjourned in the presence of the judge, clerk and the marshal. How did the clerk know who was present when the record was prepared so irregularly. IMPOSSIBLE, OF COURSE, for him to remember for each of the thirty or sixty days. In order to prevent stamping the record on Sunday the use of a calendar was necessary; otherwise these minutes most probably would have certified that the court was opened and adjourned on Sunday. It was evidently more important to avoid stamping the record that court was opened and adjourned on Sunday than that the record should be more than mere *fiction;* if not, then the records would not have been certified to the opening and adjourning on May 14 to 16, when the court was at Tallahassee, Florida. Notice the long period from June until November, 1906, when no business was transacted, and this *constant opening and adjourning of the court for six days in each week.* Whether this is proper to be authorized for *any purpose* by the Attorney General, or the Department of Justice, or the Treasury Department, we are not concerned, but we are concerned with the force and effect it has upon the status of the court. It is our contention that such action on the part of the clerk not only deprives the record of its verity and dignity as a record, but also that the court itself stood adjourned after the 14th of May, 1906, until the next regular term of March, 1907, and that the session of the court in November, 1906, at which time these appellants were tried, was irregular and void, it being neither a *regular, adjourned,* nor *special term.*

The record by these *rubber stamps* (T. R., 77) certifies that the court at Pensacola was opened and adjourned at Pensacola by the clerk and the marshal on the 14th, 15th and 16th of May, 1906, *when in truth and in fact* the clerk, judge, and the marshal were actually holding court, *trying cases by the jury* in open session at Tallahassee, Fla., on May 14, 15 and 16, 1906. *The record certifies,* by the *rubber stamp,* that court was *opened* and *adjourned each day at Pensacola,* yet the *truth asserts* that the *actual trial of cases was proceeding by the same judge,* the *same clerk* and the *same marshal two hundred miles away,* in the city of Tallahassee (T. R., 45).

As above stated, we have nothing to do with the criticism which may be directed to this conduct by the Department of Justice or the Treasury Department, but we do insist that the fact that there was no adjournment at Pensacola until a future day, within which time the court by the same judge could go to Tallahassee and return, that leaving Pensacola without adjournment over to a day certain and going to another place, to wit, Tallahassee, *ipso facto* adjourned the court for the term; *and, if so, then there was no court in November and December,* 1906, *when these appellants were tried.*

The general rule may be conceded, but the exception to the rule is that in jurisdictions divided into judicial districts in which the term of court for each county or district begins on a set day, the duration of the term is ended by the arrival of the day fixed for the beginning of the term in the other district, unless there are statutes authorizing the session of the same court to be held at the same time in both districts.

21 Ency. Pleading and Practice, 632-635, inclusive.

And that this exception to the rule should apply in case of Federal courts seems to be recognized by Congress in the enactment of section 746 of the Revised Statutes, which provides that a case may be completed though unfinished at the time of the arrival of the time fixed for the next term.

So, in the case at bar, the leaving of the court at Pensacola without adjourning over to a day certain, and by the same judge, clerk and the marshal going to Tallahassee and holding court, *ipso facto* adjourned the court for the term, which carried it over until the first Monday in March, 1907. There was no special term of the court called and there is no statute authorizing the court to sit in the two divisions, one at Tallahassee and the other at Pensacola, at the same time, and such condition would of course be impossible with only one judge, one clerk and one marshal, as was the condition with the instant case (T. R., 46).

Minutes not conclusive against facts which show proceedings void.

17 Cyc., 1301.

Order for adjournment can't be antedated.

11 Cyc., 729.
20 Mo. App., 322.

Power to adjourn can't be delegated to the clerk.
State *vs.* McBain, 78 N. W., 603.

Order fixing the term of court must appear of record.
11 Cyc., 729.

It will be observed also that *the only order in any way calling for the organization of the court in November* was that of Judge SHELBY (T. R., 120), but this order was granted by Judge SHELBY at *Huntsville, Ala.*, without the jurisdiction of Florida, and is not an order calling for a term of the court, but merely directing that a jury be drawn. Such order by Judge SHELBY, therefore, not being within the jurisdiction of the northern district of Florida, and not being an order calling a term of court, was void and gave no validity to the acts and proceedings of the court in the trial of appellants. The statute does not authorize the district or circuit judges to transact any official business outside of the scope of the territorial jurisdiction of the court; besides we think such is a proper limitation upon their jurisdiction to act; otherwise litigants and parties having business before the court might be compelled to transact that business in the summer resorts of North Carolina or the mountains of Maine, which clearly would be a burden unreasonable to be put upon citizens of Florida.

FIFTH ASSIGNMENT OF ERROR.

That the court erred in finding that the indictment upon which the petitioners were tried and convicted was found by a grand jury of the Circuit Court.

Passing the question of the organization of the court, which we have referred to *supra*, we come to the question of the indictment. There were several indictments found by the same grand jury at the same time and upon the same state of facts, among which was indictment No. 590, upon which the appellant Gallagher was tried, and No. 592, found and filed November 12, but which was *nolle prossed* November 14 (T. R., 141), AND No. 597, UPON WHICH THE APPELLANTS HARLAN, HUGGINS, AND HILTON WERE TRIED, WAS THE PARTICULAR INDICTMENT NOT FOUND BY THE GRAND JURY AND NOT FILED NOR RETURNED BY THE GRAND JURY. The minute records from the criminal docket, which was the only record of *original entry*, is shown as Exhibit B (T. R., 140) that asserts that the indictment was found November 14 and returned on the same date, upon which date also trial began. BUT THE TRUTH IS, and the record book, which is a bound volume kept as the *minutes* of *the grand jury* and signed by its foreman and clerk, shows that there was no indictment found against either of these appellants on November 14 (T. R., 147-148), and the formal presentment of the grand jury (T. R., 127) checks, or tallies, precisely with the copy of the minutes of the grand jury, kept in the regular bound volume and called the "Grand Jury Docket." In this final report they certified to the court that they investigated 31 cases, found 23 true bills and 8 no true bills, and so does the "Grand Jury Docket" certify (T. R., 142-148). Besides all this, and equally as positive, is the testimony of the *grand jurors* themselves, thus, namely: Morris Baer, George Turner, Lee Daniels, Golson and Davis. Morris Baer testified positively that THERE WAS NO VOTE UPON THIS INDICMENT (T. R., 36). George Turner testifies positively that THERE WAS NO VOTE TAKEN ON THE INDICTMENT (T. R., 39). Mr. Golson testifies that THERE WAS NO VOTE UPON THE INDICTMENT (T. R., 40-41), and likewise with the witness Lee Daniels.

If the court had no authority to organize, the grand jury's action was void and the trial a nullity.

> 22 Cyc., 196; 11 Cyc., 728.
> 36 Alabama, 236; Davis *vs.* State, 46 Alabama 80.
> McGlaskin *vs.* U. S., 71 Fed., 434.
> State *vs.* Brown, 127 N. C., 562; 37 S. E., 330.

Objection cannot be waived.

Gale *vs.* U. S., 73.

Even if the witnesses were not sworn before the grand jury, the indictment is void.

U. S. *vs.* Coolidge, 25th Federal case No. 14858, and 45th American Decisions, 507 and 120 Alabama, **408.**

We think the evidence above suggested as shown by the record is not only clearly admissible, but conclusive to show that no evidence was taken by the grand jury. Illustrative of this principle are the following cases:

1021 U. S. Rev. Statutes; 16th American Decisions, 284.

People *vs.* Shattuck, 6 Abb., new cases, 33.

Low's case, 16th American Decisions, 271.

20th Cyc., 1352 to 1354.

Clinton *vs.* State, 35th Florida, 737.

17th American and English Ency. of Law, 1286 and 1302.

Commonwealth *vs.* Smith, 9th Massachusetts, 110.

Goodwin *vs.* State, 29 Fla., 511, (text, 518-525).

3 Iowa, 249; 17 Ark., 220; 19 Ark., 178.

The Federal Constitution and Statutes require that no person shall be tried for such offense except upon presentment by grand jury and that at least twelve of the number shall concur. *In this instance there was no concurrence, for there was no vote.* Therefore, the indictment is but a *spurious instrument,* the result of which must be fruitless for the Government. It is not so important that parties shall be *tried* and *convicted,* as it is that in our American jurisprudence the channels by and through which truth is established, justice administered and constitutional rights preserved, are kept *clean* and *orderly;* otherwise, we cannot hope to stimulate confidence in the minds of the people in the judiciary.

SIXTH ASSIGNMENT OF ERROR.

We are of the view that we have discussed this assignment already and will not at this time repeat it; reserving further reference thereto for oral argument and supplemental brief.

SEVENTH ASSIGNMENT OF ERROR.

That the Court erred in holding that the minutes of the court showed a record entry that the indictment was returned and presented by the grand jury in open court.

The only record which shows that as to 597, upon which the appellants Harlan, Huggins and Hilton were tried, is shown in the transcript, page 140, which is not a sufficient record of the fact that the indictment was found and returned by the grand jury, (29 Fla., 511 and 518 to 525). This Exhibit B from the criminal docket is the only book of *original entry,* except the minute book made by the use of rubber stamps to which we have before referred. The other books are mere *typewritten records* of the minutes, as the testimony shows, even made thirty days after the adjournment of court, or after the particular day of which it purports to be a minute. Exhibit B (T. R., 140), is no record to show that this indictment was *found* and *returned by the grand jury in open court.* The case is precisely similar to that of Goodwin *vs.* State, 29th Florida, 511, in which Justice TAYLOR gives the reasons why the RECORD of the minutes of the court MUST SHOW conclusively that the indictment itself WAS RETURNED AND FILED IN OPEN COURT BY THE GRAND JURY; otherwise, the clerk or any designing person could palm off a *spurious indictment* on the court and an innocent person be made to suffer, notwithstanding the solemn safeguard of the constitutional provision.

EIGHTH ASSIGNMENT OF ERROR.

That the court erred in amending the sentence by striking out the words "*hard labor.*"

The statute does not authorize sentence to or at hard labor, and punishment in excess of that allowed by statute renders the sentence utterly void.

Ex parte Duncan, 62 S. W., 761.
People *vs.* Liscomb, 60 N. Y., 559.
Haines *vs.* Haines, 35 Mich., 138.
87 Fed., 172-183.
87 Ala., 178; 12 Cyc., 781.
93 U. S., 396.
50 Fed., 921.
46 Fed., 477.
10 Fed. Cases, 5293.
161 Mass., 120.
5 Metcalf, 531.
152 U. S., 62—Pridgen case.

Cumulative with these authorities as to the necessity of requiring the filing and presentment in open court are 20th Cyc., 1356, and Note 66; Godwin *vs.* State, 29th Florida, 511, 518, 525; 13th Florida, 651; 17th Ency. of Law, 1301.

The Federal court in the case of *In re* Bain, 121 U. S., 1. laid down the rigid rule prohibiting the slightest amendment to an indictment, that the constitutional guaranty might be preserved and made effective. If the court will set aside the indictment as a nullity because the witnesses were not sworn, as in the case of U. S. *vs.* Coolidge (25th Federal case 14858, 45th American Decisions, 507, and Low's case, 16th Am. Dec., 284), HOW MUCH MORE READILY SHOULD SUCH ACTION BE HAD AND THE PROCEEDINGS DECLARED VOID WHEN THERE WAS NO VOTE UPON THE INDICTMENT. The solemnity contemplated before a citizen can be put upon trial, and his liberty put in jeopardy, is absolutely lacking in the case at bar, and in order to preserve the dignity and verity of records, safeguard the constitutional rights, such action by this court should readily be declared void.

Circumstances over which we have no control have precluded our completing this brief earlier. We are forced to omit discussing more elaborately several questions involved and suggested to our mind in this proceeding. We hope to do so in a supplemental brief which we ask the privilege of filing.

Respectfully submitted.

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